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Pertinet, et nescire malum est, agitamus.” **HORAT.**

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CONTENTS OF VOLUME V.

CHANGES IN THE LAW IN THE SESSION 1831—1832.

Prescription Acts, 1.
Anatomy, 37.
Excise Permits, 57.
Stages and Horses, 90.
Embezzlements, 101.
Coining, 118.
Forgery, 134, 135.
Theft, 135.
Bankrupts, 151.
Corporations, 151.
Insolvent Debtors, 151.
Remedies against the Hundred, 171.
Bills of Exchange, 171.
Lunatics, 172.
Customs, 183.
West India Colonies, 184.
Irish General Registry of Deeds, 278.

LAW REFORM: 149.

Court of Chancery, 4, 6, 85, 92, 311, 424.
General Registry, 294, 357, 379, 421, 423, 465.
Local Courts, 30, 328, 373, 433, 469, 493.
The Church, 53, 294.
Nisi Prius Arrears, 215.
Political and Judicial Duties of the Lord Chancellor, 229.
Lunatics, 293.
Real Property, 309.
——— Dower, 407.
——— Inheritance, 477.
——— Fines and Recoveries, 485.
——— Curtesy, 517.
Adjournment of Assizes, 510.

NEW BILLS IN PARLIAMENT:

Norfolk Assizes, 315.
Suits at Common Law, 360, 375.
Patents for Inventions, 360, 377.
Law Amendment, 389, 422, 515.
Highways, 405.
Local Jurisdictions, 453, 472.
Privy Council Appeals, 462.
Court of Chancery Regulations, 501, 515.

REPORTS OF COMMITTEES AND COMMISSIONERS:

Dramatic Literature, 6.
Secondary Punishments, 166.
Eligibility of Quakers, 331.
Public Petitions, 347.
Second Common Law Report, 389, 478.

PARLIAMENTARY RETURNS:

Masters in Chancery, 172.
Secretary of Bankrupts, 174.
Criminals, 368.
Poor Rates, 368.
Revising Barristers, 444.

EXPIRED AND EXPIRING LAWS, 350.

PARLIAMENTARY DEBATES:

Chancery Reform, 247.
Criminal Laws, 442, 519.
Real Property Bills, 463.

PARLIAMENTARY PROCEEDINGS:

House of Lords, *passim*.
House of Commons, *passim*.

RECENT DECISIONS IN ALL THE SUPERIOR COURTS, *passim*.

The subjects of the Decisions are stated in the Index.

NEW RULES OF THE SUPERIOR COURTS:

Michaelmas Term (1832), 17, 50.
Notes on the Rules, 23, 58.
Hilary Term (1833), 272.

SITTINGS IN THE SUPERIOR COURTS, 34, 64, 95, 96, 193, 208, 209, 226, 274, 289, 306, 320, 468, 481, 482, 513.

CIRCUITS OF THE JUDGES, 50, 243, 290.

REVISING BARRISTERS COURSES, 9, 33, 50, 65, 97, 381.

REVIEWS:

New Editions of Watkins's Conveyancing, 3.
Bentham on Plurality of Judges, 27.
Miller's Reform Act, 29.
Cooke's Short-hand, 30.
Ram's Assets, 41.
Ellis's Life Assurance, 55.
Dowling's Collection of Statutes, 88.
Shelford's Law of Lunatics, 106, 121.
Godson's Law of Patents, 119.
Coventry's Stamp Laws, 136.
Atkinson's Marketable Titles, 152.
Theobald on Special Pleading, 165.
Hayward's Common Law Statutes, 189.
Manning's Courts of Revision, 217.
Chapman's Practice, 296.
Woolrych on General Registry, 312.
Lumley's Law of Annuities, 345.
Beaumont's Law of Insurance, 364.
Dax's Exchequer Practice, 378.
Corder's Local Courts of Westminster, 236.
Strickland on Law Reform, 422.
Matthews's Digest of Offences, 509.

LETTERS OF A BARRISTER TO THE LORD CHANCELLOR:

On his future Conduct, 197, 267.
Revival of the Local Courts Bill, 469.

THE REFORMERS OF THE LAW:

Lord Somers, 261.
Sir Matthew Hale, 341.

THE PROPERTY LAWYER:

Title Deeds, 87.
Charging Clergyman's Benefice, 119.
The Doctrine of Estoppel, 139.
Tenancy at Will, 214.
Shrubs, 230.
Canal Shares, 343.
Legacy Duty, 409.
Anticipation, 491.

TABLE OF CONTENTS.

PRACTICAL POINTS OF GENERAL INTEREST :

Annuity obtained by Medical Man, 2.
Validity of Composition Articles, 40.
Clause to defeat Bankrupt Laws, 58.
Lost Instrument, 102.
Lodging-house Keepers, 155.
Advocates before a Magistrate, 184.
Infant Bankrupt, 263.
Assignees of Bankrupt, 310.
Stage Coaches, 362.
Official Assignees, 423.
Game, 509.

DISSERTATIONS ON CONVEYANCING :

Presumption of Survivorship, 38.
Trust to Pay Debts, 102, 141, 222.
Limitation and Nonclaim, 220.
Practical Hints, 284.

FOREIGN LAWS, 89, 281, 284.

LAW LECTURES, 69, 437.

LAW OF ATTORNEYS :

Practising in Courts without Admission,
79, 329.
Abandoning a Cause, 246.

INSTRUCTOR CLERICALIS :

Actions at Law, 325.
Conveyancing Department, 441.

DISPUTED DECISIONS :

Practice, 7.
Warranty, Discontinuance, Estoppel, 45.
Copyholds, 141.
Practice—New Rules, 142, 155.
Signing Agreements, 348.

MISCELLANEOUS DISSERTATIONS :

Quakers in Parliament, 60, 294.
Lawyers' Bills of Costs, 108.
Arrear of Nisi Prius Causes, 215.
Privileges and Rules of Parliament, 234,
282.
Royal Fish, 296.
Attorneys' Certificate Duty, 333.
Judgments in Ireland, 333.
Secondary Punishments, 89.
Bills for Partnership Accounts, 494.
Stamp Laws, 510.

SELECTIONS FROM CORRESPONDENCE :

The Law Commissioners, 44.
Delays in the Masters' Offices, 62.
Articled Clerks, 153.
Costume of Solicitors, 154.
Pretended Attorneys, 154, 203.
Certificated Conveyancers, 155.
Commissioners of Stamps, 155.
Lawyers in Parliament, 155.
Education of Attorneys, 203, 314.
Admission Fees, 204, 449.
Examination of Attorneys, 222, 283.
Entries on the Roll, 283.
Metropolitan Local Courts, 360.
Provisional Assignee, 300.
Statute of Limitations, 349.
Certificate Duty, 349.
Declarations De Bene Esse, 366.
Service of Writs, 413.
Gavelkind, 450.

LEGAL SOCIETIES :

Incorporated Law Society, 50, 265, 346,
365, 382.
United Law Clerks' Society, 44.
Northern Agents, 333.

JUDICIAL CHARACTERS :

Lord Tenterden, 21, 92.
Chief Justice Denman, 27.

LAWYERS IN PARLIAMENT, 112, 117, 133, 181.

LEGAL BIOGRAPHY, 204.

NEW COURTS, JUDGES' CHAMBERS, AND
LAW OFFICES ON THE ROLLS ESTATE,
186, 264, 300, 346.

ARTICLES FOR THE GENERAL READER :

See also *Remarkable Trials, Pleasantries
of the Law, Legal Reminiscent, Miscel-
lanea*, &c.

First day of Term, 9.
Legal Antiquities, 81.
Early days of Lord Eldon, 82.
Vision in Lincoln's Inn Library, 182.
Anecdotes of Lord Erskine, 334.
The Last Recovery, 362.
Speech on General Registry, 465.

PLEASANTRIES OF THE LAW, 78, 142, 218,
253, 280, 411, 517.

THE LEGAL REMINISCENT, 221, 268, 298.

REMARKABLE TRIALS, 42, 59, 90, 123, 176,
201, 231, 330, 425.

IMPORTANT RECENT TRIALS, 254.

BARRISTERS CALLED, 97, 335.

ATTORNEYS TO BE ADMITTED, 97, 109, 125,
143, 336, 366.

TERMS AND RETURNS, 177.

QUARTER SESSIONS, 178.

LEGAL CHRONOLOGY FOR 1832, 245.

LEGAL OBITUARY, 335.

NOTES OF THE WEEK, *vide Index*.

QUERIES, *vide Index*.

ANSWERS TO QUERIES, *vide Index*.

MISCELLANEA :

Legal Antiquities, History, Anecdotes,
&c. *vide Index*.

BANKRUPTCIES SUPERSEDED, 82, 178, 259,
338, 450.

BANKRUPTS, 83, 178, 259, 338, 450.

LISTS OF NEW PUBLICATIONS, 84, 180, 260,
340, 452.

WORKS PREPARING FOR PUBLICATION, 180,
260.

THE EDITOR'S LETTER BOX, *passim*.

The Legal Observer.

VOL. V. SATURDAY, NOVEMBER 3, 1832. No. CVII.

——— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”
HORAT.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIA- MENT, 1831—1832.

No. IV.

THE PRESCRIPTION ACTS, 2 & 3 W. 4. c. 71,
AND 2 & 3 W. 4. c. 100.

Two of the most important Acts passed in the last Session of Parliament are those relating to the law of Prescription. It will be proper therefore for us to see how the law stood before the alterations recently effected, and then to mention the substance of the new measures.

It should be first stated, that the changes made are of a partial nature. It would have been well if the whole law relating to the limitation of actions at law and suits in equity had been amended by one Act; but the defects remedied by the above Acts are those only which relate to *incorporeal hereditaments*; and we are ready to admit that these are the most glaring. The prescriptive right to profits and easements over the soil of another, as rights of way, common, light, &c., were rendered very difficult of proof, as by the antient rule of the common law, enjoyment of such rights was to be proved from time whereof the memory of man runneth not to the contrary, or during legal memory. The limits of legal memory have greatly fluctuated. They long depended on the period for bringing a writ of right, which till the 32 H. 8, was not any certain period, but dated from some

historical event, fixed from time to time; as the beginning of the reign of Henry 1; the return of King John out of Ireland; the journey of Henry 3 into Normandy; or the coronation of Richard 1. This last epoch is considered as the commencement of legal memory at the present day^a; so that, strictly, the right to an easement of this nature could only be established by legal proof of an adverse enjoyment of six hundred and forty odd years. A rule so absurd and unjust as this was partly alleviated by the practice of the Courts, and the doctrines of presumption; and proof of enjoyment as far back as living witnesses could speak, was held sufficient to raise a presumption of enjoyment from a remote era, and a grant would be presumed; (see *Knight v. Halsey*, 2 Bos. & Pul. 206; *Livett v. Wilson*, 3 Bing. 115; *Cross v. Lewis*, 2 B. & C. 686;) but still difficulties frequently arose. This presumption, like all other presumptions, was liable to be rebutted. It might be distinctly proved that the right did not, or could not exist at any one point of time since the commencement of legal memory; and variances between the fictitious grant pleaded and that attempted to be presumed, frequently arose. This state of the law, as it frequently led to the defeat of just rights and claims on purely technical grounds, obviously required a remedy; and it is therefore enacted by the 2 & 3 W. 4. c. 71,^b

^a See First Report of the Real Property Commissioners, printed in the Monthly Record for September, 1832.

^b Printed verbatim, 2 M. R. for October.

that after *thirty* years enjoyment, claims of common, and other profits *a prendre*, shall not be defeated by shewing that they were first enjoyed at any period prior to the thirty years; but such claims may be defeated in any other way by which the same are now liable to be defeated; and when such rights shall have been enjoyed for *sixty* years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some agreement expressly made for that purpose. By § 2, no claim of right of way uninterruptedly enjoyed for *twenty* years, shall be defeated by shewing that such way was first enjoyed at any time prior to such period of twenty years; but it may be defeated in any other way: and when such way shall have been enjoyed for the full period of *forty* years, the right shall be deemed absolute, unless it shall appear that there was some agreement expressly made for the purpose. By § 3, the use of light for *twenty* years without interruption, shall be deemed absolute, any local custom to the contrary notwithstanding, except there be an agreement in writing to the contrary between the parties.

Tithes were another species of property to which the statutes of limitation did not apply. The hardship of this exception, even upon the clergy, has been repeatedly pointed out, and by none better than the Real Property Commissioners, in their third Report. A partial measure on this subject also has been passed into law, with respect to claims of *modus decimandi*, and entire exemption from tithes. Before the passing of the late Act, a *modus*, to be valid, must be deemed to have subsisted from the reign of Richard the First; and if it could be proved to have commenced after that period, it would fail. And it was also the settled law of the land, that nonpayment of tithes for any period, however long, was no ground of exemption. By the 2 & 3 W. 4. c. 100^a, a very considerable alteration as to these rights is made; and it is enacted (§ 1), that all prescriptions and claims of any *modus*, or of any exemption or discharge of tithes by composition real or otherwise, shall be sustained and be held valid upon evidence shewing—in cases of *modus*, a payment of such *modus*; and in cases of exemption, the enjoyment of the land without payment of tithes for the full period of *thirty* years next before the time of such demand, except under the particular circumstances

therein mentioned. And by § 2 it is enacted, that every composition for tithes made or confirmed by the decree of any Court of Equity in England, in a suit to which the ordinary, patron, and incumbent were parties, shall be valid; and that no *modus* or exemption shall be within the act unless it shall be proved to have existed within one year next before the passing of the Act. By § 3, it is provided that the Act shall not be available in any suit now commenced, or which may be hereafter commenced during the present session of parliament, or within *one year* from the end thereof. The act is not to extend to any case where the tithes of any lands shall have been demised for any term of life or number of years, or where any composition shall have been made, and such demise or composition shall be subsisting at the time of passing this Act, and where any action shall be instituted for the recovery of the tithes in kind within three years next after the expiration of such demise or composition (§ 4). The time during which lands shall be held by persons entitled to the tithes thereof, shall be excluded in the computation under this Act (§ 5), as also the time during which any person capable of resisting any claim shall be under disability (§ 6).

These are both useful Acts, and will be found of much importance in practice.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XXXIII.

ANNUITY OBTAINED BY MEDICAL MAN.

A DEED obtained by a medical man, or by any professional adviser, will always be looked on with suspicion. See *Mucnabe v. Hussey*, 2 D. & Cl. 440; and Dig. for 1832, 87. The following case is in conformity with this rule:

This was a bill by the executrix of the late Colonel Popham against the defendant Brooke, praying to have a deed and bond by which Colonel Popham had secured to the defendant an annuity of 100*l.* for the term of his the defendant's life, delivered up to be cancelled. Colonel Popham having had an apoplectic attack in India, returned to this country for the benefit of his health, in a ship belonging to the East India Company, of which the defendant was surgeon; and during the voyage, in the course of which he had another apoplectic attack, he enjoyed the benefit of the defend-

^a Printed in Monthly Record for October.

ant's professional assistance. The ship arrived at Gravesend on the 5th of July, 1824, and the defendant attended Colonel Popham to London, where they arrived on the 7th of July, and resided at an hotel. On the 8th of July, Dr. Nevinson was sent for by the defendant, to give his opinion on Colonel Popham's case. Being examined as a witness in the cause, Dr. Nevinson stated that he found Colonel Popham incapable of business, uttering monosyllables only, and that, too, with difficulty, and labouring under a diseased organization of the brain. Dr. Nevinson, on that occasion, informed the defendant, that the Colonel could not recover, or live long. Either on the same 8th of July, or on the day preceding, the widow of General Popham, the uncle of the Colonel, and by whom he had been brought up, called at the hotel to see Colonel Popham, and being examined as a witness, she stated in her evidence that she there saw the defendant, who informed her that the Colonel was in a deplorable state, and not fit to see his relations, and that, in the opinion of the defendant, the Colonel could not live more than a month or six weeks: that she inquired of the defendant whether Colonel Popham had received a note which she had written to him the day before; that the defendant answered, that he the defendant had received the note, but had not communicated it to the Colonel, because he was incapable of understanding, of reading or of writing. On the 12th of July, the deed and bond in question were executed by Colonel Popham, whereby, in consideration that the defendant would remain with the Colonel during the remainder of his life, as his medical assistant, the Colonel secured to the defendant an annuity of 100*l.* for the life of the defendant. Colonel Popham and the defendant remained at the hotel in London until the end of August, and then went together to the house of an aunt of Colonel Popham's, in the country, where Colonel Popham died, in the following October. The attorney who drew the deed, and who till then was a stranger to Brooke, deposed that Colonel Popham perfectly understood the nature of the instruments before he executed them, and was capable of business at the time. Several relations of Colonel Popham, who saw him in the country, gave evidence, as to the care and attention with which the Colonel was attended by the defendant; and that, in their judgment, Colonel Popham was capable of understanding the effect of the instruments. On the part of the defendant, the case was rested on the capacity of Colonel Popham, and on the sacrifice which the defendant had made in giving up his situation as surgeon to the East India ship, for the purpose of fulfilling his part of the contract.

The Master of the Rolls said, If it were admitted that Colonel Popham was of capacity to understand, and did perfectly understand, the nature and effect of these instruments, they could not be maintained by the defendant under the circumstances, as the defendant well knew that he was in fact giving little or no

consideration for so large a gratuity; whereas Colonel Popham must have been then in the hope of a prolonged life. Under such circumstances, it would have been the bounden duty of the defendant to have declined a compensation of that character, even if Colonel Popham had pressed it upon him, and had been in truth capable of business. If, however, the capacity of Colonel Popham on the 12th of July, when the deeds were executed, had been a material ingredient in the case, is it possible that such capacity could be assumed, consistently with the evidence of Dr. Nevinson and Mrs. Popham, which applies to the 8th of July. The plaintiff is entitled to a decree according to the prayer of the bill, with costs. *Popham v. Brooke*, 5 Russ. 8.

REVIEW.

Principles of Conveyancing, by Charles Watkins, Esq., of the Middle Temple, Barrister at Law. *With Annotations by George Morley, Richard Holmes Coote, and Thomas Coventry, Esqrs., Barristers at Law. Seventh Edition, revised and enlarged.* By a Barrister of the Middle Temple. Saunders & Benning. 1831.

Principles of Conveyancing, by Watkins. *Eighth Edition, with large additions; containing the Law relating to the Creation and Transfer of Estates and Interests in Real and Personal Property.* By John Merrifield, Esq., of the Middle Temple, Barrister at Law. Maxwell. 1832.

A good student's book on Conveyancing remains still to be written. The second volume of Blackstone, with all its faults, is still the very best, as yet, in the hands of the profession; but it is almost necessarily defective in some parts, and incorrect in others; besides, that as its eminent author was not himself a conveyancer, he could not remove many of the doubts and difficulties on the subject, which are only discovered in practice. The work of Mr. Burton, whilst it displays great powers of condensation and indefatigable industry, (which last is said to have cost its amiable author his life, when just at the commencement of his career,) is so deficient in its arrangement as to render its first perusal difficult, and almost repulsive, to a mind new to the subject. The work of Mr. Watkins, although sufficiently popular, we place below both these. As originally written, it did very little to smooth the difficulties of the student, commencing by a violent attack on

the existing law, and carrying it on throughout the rest of the work. It is neither scientific nor practical in its arrangement. The points are not presented in a way calculated to fix themselves in the mind. It has, however, been generally employed as the only book absolutely written for the purpose, and has been from time to time improved by the additions of various editors, with one exception (that of Mr. Preston) however, appended in the form of notes—always an awkward mode of conveying information for a student, as it distracts his attention, and prevents his taking a general and uninterrupted view of the subject. The labours of some of the editors have been, however, of much value, more particularly the notes of Messrs. Morley and Coote, which, as far as they go, are not surpassed, either in style or information, by any legal writer.

The two editions now before us are both very recent. The first contains the notes of Messrs. Morley, Coote, and Coventry, all of which were given in a former edition, and the additions of a Barrister, who, as he chooses to keep his visor down, we shall not name. The labours of this last gentleman are not very remarkable either in extent or information. They appear to us, however, to be generally correct, and to be derived from the proper authorities, and to shew no improper appropriation of the labours of others—a fault, we are sorry to say, but too common. One or two remarks, however, have occurred to us. In the note on terms of years, the doctrine and cases on the presumption of surrenders of terms of years are barely referred to. They should have been more fully given. In the note to the chapter on Coparceners, no allusion is made to the doctrine of warranty on a partition between coparceners, which gives rise to important results in practice. On the other hand, we are much pleased with the tables which the editor has introduced in p. 233, shewing how uses will be executed under the statute, which will be useful to the student.

The edition by Mr. Merrifield, being just published, has the advantage of being the last. We are inclined to think, however, that he has somewhat overloaded the work. His notes shew considerable industry, and a tolerable knowledge of the existing information on the subject. He has freely availed himself of the well-known treatises on the various chapters contained in Mr. Watkins's work, and reduced them into notes to be appended thereto. In short, if a student be

lazy, he will find himself saved much trouble by the labours of Mr. Merrifield. We should say, however, that what he has done for the public, the student should do for himself; and we doubt whether the old matter, with the slight modal differences which Mr. Merrifield has made (for we find no new views taken), will obtain any very considerable success; nor can we say that he has, in every instance, given all the necessary information. Thus, in p. 14, although expressly writing on the merger of terms for years, he omits to state that they may merge in one another, but mentions it (p. 509) under the head Surrenders of Terms. In treating of the requisites to the estate of joint-tenants, he dwells only on those which relate to the estate at common law, without stating the different rules under the Statute of Uses. In general, however, the learned editor is correct, and perhaps less likely to mislead the student than a more ambitious writer; and as such, we recommend the work to our readers.

PROPOSED REFORMS IN THE COURT OF CHANCERY.

DELAYS IN THE MASTERS' OFFICES.

WE have received a pamphlet, addressed to the Suitors of the Court of Chancery, from Mr. R. M. Hume, a solicitor of the Court, which appears to be deserving of notice. It proposes a remedy for the delays in the Masters' offices. The writer commences with observing, that the grievances under which the suitors labour are two-fold—that which arises from the *delay* in the hearing and deciding of suits—and the delay and expence of proceedings in the Masters' offices;—and he observes, that the delay in the former, by a separation of a portion of the jurisdiction, has been partially removed, and a diminution of expence in the latter is contemplated. But for the *delay in the Masters' office* no remedy is at present proposed. Indeed a new jurisdiction about to be conferred on the Master—which, though it will further relieve *the delay in Court*—will tend to increase *the delay* in the Masters' offices. His object, therefore, is to point out the *nature* and *cause* of the delay under the jurisdiction of the Masters in Chancery, and the *remedy*.

The delay, he contends, is occasioned en-

tirely by the overcharged *extent* of the business in the Masters' offices, the *want* of a sufficiency of Masters to dispose of it, and the *nature* of the practice which governs the proceedings before the Master.

The solicitors, he continues, have been accused of causing this delay, and the Masters have not been spared. Neither, he says, are to blame. It is the *weight* of the business and the *nature* of the practice which are the true causes of the delay. He speaks from experience, of the constant and unvaried anxiety of the Masters to forward the business before them—and to them, he alleges, no blame ought to attach. With respect to his professional brethren, he maintains, that there can be no temptation to delay; for whether the suit is terminated within six months or six years, no greater profit is acquired by the solicitor; but in fact a great disadvantage is suffered, by the outlay of capital and time, while enduring at the same moment, the charge, unjust because untrue, of procrastination and delay.

After some further remarks, he proceeds to state his suggestions for the removal of the still existing delay in the Masters' offices:—

First, he proposes,—That the Lord Chancellor should be empowered to nominate, any number not exceeding four, additional Masters.

Second—That the practice of hourly attendances before the Masters be discontinued, and in lieu of that mode of attendance, that each matter of business be heard by the Master in regular routine, in the same manner as cases are heard and disposed of in Court.

In order that the *nature* and *cause* of the delay may be understood, he briefly details as follows, the practice now prevailing.

“A decree is made in a suit between litigating parties. Before a *final* decree can be made, it is essential, that certain facts or circumstances be inquired into by the Master, and accordingly it is referred to the Master in ordinary in rotation, to call the parties or their solicitors before him, in order that evidence may be adduced in support of or against the particular case, upon which the Master is to give an opinion. The solicitor for the prosecution of the inquiry prepares and leaves in the Master's office a statement, called a state of facts, containing a detail of the circumstances and facts, to which the attention of the Master is to be drawn, and upon which he is to decide. This state of facts is supported by the affidavits or examination of witnesses. The solicitor, on leaving the state of facts of his client, takes out a warrant, termed a warrant on *leaving*,

which is returnable on the day but one following the lodging of the document. This warrant is to give notice to the other party or his solicitor of the state of facts having been left, that a copy of it may be inspected. On the return of the warrant on leaving, a warrant to *proceed* on the state of facts is taken, returnable at the earliest possible time before the Master. The Master sits from ten to four o'clock. The warrant must be taken out for one of those hours on a future day. Many references in many different suits are pending before the Master for investigation at the same time: and it frequently happens, that a warrant or appointment cannot be obtained earlier than a week or ten days from the time of application. The appointed time arrives, the matter is proceeded on before the Master, but before the question can be decided the hour has expired, the next suitor has his appointment, and the discussion must stand adjourned. Another warrant for a future day is applied for and obtained—the business must be entered into *de novo*, for the parties have probably forgot the particular point at which the matter was discontinued at the former attendance: and ere a decision can be arrived at, again the appointment of another suitor interferes—and the business must be still adjourned. Thus appointment, after appointment, becomes nugatory. The state of facts drags on its weary weight, week after week, month after month, until the long vacation arrives,—and then the business must be postponed until the following term, and another year teems with the same dilatory mode of procedure. If this is the case in regard to a single inquiry in a suit—it can be readily imagined that the delays are intolerable where there are many inquiries in the same suit—and year after year passes on, in that labyrinth of *delay* and *procrastination*—which withers the hopes of the suitor,—and renders the Court of Chancery a curse instead of a blessing to the country.

“The extent of the business in the Masters' offices, and the present mode of performing it by hourly warrants, are the true cause of the delay. If there were a sufficiency of Masters to execute the business—each matter of business could be continued in discussion and hearing before the Master at a single attendance, until it was disposed of—and although the matter might continue for several hours, still it would be to the advantage of the suitor—for it would be disposed of effectually, without the delay of unfinished attendances—at irksome and injurious distances from each other. If this mode was adopted, each suitor would have the advantage of his suit being brought to a conclusion in the Masters' offices, weeks, months, and years earlier than is the case according to the present practice.”

In support of his proposal for an increase in the number of Masters, Mr. Hume observes, that the extent of the business of the Court of Chancery a century back, bore no comparison to its present extent. The questions which then occurred were few.

For many years past, matters of the greatest intricacy and difficulty have been in question, involving all the refinements of equitable, conveyancing, or mercantile law. The Masters 100 years since were eleven in number, for the Accountant General then, and for many years, acted as a Master in ordinary. Now there are but ten Masters, for the labours of the office of Accountant General give that officer full employment, and his being considered a Master is merely nominal. If the business of the Court 100 years since required eleven Masters, he contends, that when the business is increased to, at least, ten times its former extent and intricacy, ten Masters are wholly inadequate to perform it.

We think, however, that before any new Masters are appointed, it should be ascertained by a change of practice whether the present Masters are not competent to the discharge of their duties.

We believe that the suggestion of continued hearings before the Master, in preference to hourly warrants, has been already brought forward; but Mr. Hume is entitled to thanks for thus forcibly calling attention to the necessity of an alteration.

Having thus adverted to one material branch of reform, we may take the opportunity of noticing another, which is briefly pointed out in the following letter of a correspondent:

SIX CLERKS' OFFICE.

I have read in your number for October 13th, the plan of the Chancellor's reform in this Court, which, from the tenor of your observations, would seem to comprise the *whole* of his Lordship's plan. Has his Lordship forgot the Six Clerks' Office—that thorn in the side of the solicitor, and through him of his client? I believe his Lordship, in the early part of 1831, promised to bestow his attention on this, among other Chancery abuses, as to which, allow me to refer you to Vol. I. L. O. p. 258. I do not say this from want of gratitude for the boon already bestowed; but rather that we may not lose the benefit of his Lordship's powerful exertions; for, I dare say, it will be some generations hence ere the cobwebs of the Court will be again disturbed as they are at present.

LAWS OF DRAMATIC LITERATURE.

We intend, by the commencement of the next Session of Parliament, to consider the defects in the Laws of Literary Property; and we trust the public press in general

will be induced to arouse the attention of the legislature. For the present, we lay before our readers, as a branch of this subject, the Report of a Committee of the House of Commons, on the Laws Affecting Dramatic Literature.

1. In examining the state of the laws affecting the interests and exhibition of the drama, the committee find that a considerable decline, both in the literature of the stage, and the taste of the public for theatrical performances, is generally conceded. Among the causes of this decline, in addition to those which have been alleged, and which are out of the province of the legislature to control, the committee are of opinion, that the uncertain administration of the laws, the slender encouragement afforded to literary talent to devote its labours towards the stage, and the want of a better legal regulation as regards the number and distribution of theatres, are to be mainly considered.

2. In respect to the licensing of theatres, the committee are of opinion, that the laws would be rendered more clear and effectual by confining the sole power and authority to license theatres throughout the metropolis (as well as in places of royal residence) to the Lord Chamberlain: and that his, the sole, jurisdiction, should be extended twenty miles round London (that being the point at which magistrates now have the power of licensing theatres for the legitimate drama). And as the committee believe that the interests of the drama will be considerably advanced by the natural consequences of a fair competition in its representation, they recommend that the Lord Chamberlain should continue a license to all the theatres licensed at present, whether by himself or by the magistrates. The committee are also of opinion, partly from the difficulty of defining, by clear and legal distinctions, "the legitimate drama," and principally from the propriety of giving a full opening as well to the higher as to the more humble orders of dramatic talent, that the proprietors and managers of the said theatres should be allowed to exhibit, at their option, the legitimate drama, and all such plays as have received or shall receive the sanction of the censor.

3. The committee believe that the number of theatres thus licensed (although they might be more conveniently distributed) would suffice for the accommodation of the public, in the present state of feeling towards theatrical performances, and also for the general advantages of competition; at the same time, as theatres are intended for the amusement of the public, so the committee are of opinion that the public should have a voice in the number of theatres to be allowed. And the committee therefore submit, that if a requisition, signed by a majority of the resident householders in any large and popular parish or district, be presented to the Chamberlain, praying for his license to a new theatre in the said parish or district, the Chamberlain should be bound to comply with the public wish. The com-

mittee are of opinion that all abuse in the exercise of the licence thus granted would be effectually prevented by leaving to the Chamberlain the power of applying to the Home Department for the summary suppression of any theatre which may notoriously have outraged the conditions of its licence, or the rules of public decorum.

4. The Committee also recommend, that the Chamberlain should possess the same power for the summary suppression of any theatre exhibiting any sort of dramatic representation without the sanction of his licence; considering, that as the public can procure the license if it approve the theatre, so any theatre not licensed would probably not be less opposed to the desire of the public than to the provisions of the law.

5. With respect to the licensing of plays, the Committee advise, in order to give full weight to the responsibility of the situation, that it should be clearly understood that the office of the censor is held at the discretion of the Lord Chamberlain, whose duty it would be to remove him should there be any just ground for dissatisfaction as to the exercise of his functions. The Committee recommend some revision in the present system of fees to the censor, so (for instance) that the licence of a song and the licence of a play may not be indiscriminately subjected to the same charge; and this revision is yet more desirable in order to ascertain whether, in consequence of the greater number of plays which, by the alterations proposed by the Committee, would be brought under the control of the censor, some abatement in the fees charged for each might not be reasonably made, without lessening the present income of the licenser.

6. In respect to the exclusive privileges claimed by the two metropolitan theatres of Drury-Lane and Covent-Garden, it appears manifest that such privileges have neither preserved the dignity of the drama, nor, by the present administration of the laws, been of much advantage to the proprietors of the theatres themselves. And the committee, while bound to acknowledge that a very large sum has been invested in these theatres, on a belief of the continuation of their legal monopoly of exhibiting the legitimate drama, which sum, but for that belief, would probably have not been hazarded, are nevertheless of opinion, that the alterations they propose are not likely to place the proprietors of the said theatres in a worse pecuniary condition than the condition confessed to under the existing system.

7. In regard to dramatic literature, it appears manifest that an author at present is subjected to indefensible hardship and injustice; and the disparity of protection afforded to the labours of the dramatic writer, when compared even with that granted to authors in any other branch of letters, seems alone sufficient to divert the ambition of eminent and successful writers from that department of intellectual exertion. The committee, therefore, earnestly recommend that the author of a play should possess the same legal rights, and enjoy the same legal

protection, as the author of any other literary production; and that his performance should not be legally exhibited at any theatre, metropolitan or provincial, without his express and formal consent.

8. By the regulations and amendments thus proposed in the existing system, the committee are of opinion that the drama will be freed from many present disadvantages, and left to the fair experiment of public support. In regard to actors, it is allowed, even by those performers whose evidence favours the existing monopoly, that the more general exhibition of the regular drama would afford new schools and opportunities for their art. In regard to authors, it is probable that a greater variety of theatres at which to present, or for which to adapt, their plays, and a greater security in the profits derived from their success, will give new encouragement to their ambition, and perhaps (if a play is never acted without producing some emolument to its writer) may direct their attention to the more durable, as being also the more lucrative, classes of dramatic literature; while, as regards the public, equally benefited by these advantages, it is probable that the ordinary consequences of competition, freed from the possibility of licentiousness by the confirmed control and authority of the Chamberlain, will afford convenience in the number and situation of theatres, and cheap and good entertainment in the performances usually exhibited.

Aug. 2, 1832.

DISPUTED DECISIONS.

No. XI.

Hyde v. Gardner, p. 268, 326.

PRACTICE.

THE decision of Mr. Justice Taunton in this case, has called forth a very long and able argument from your correspondent T. P. as to its correctness; but, without pretending to support the implied grounds upon which the learned Judge discharged the rule,—*viz.* the *curtesy* of the officer,—I must beg to differ from T. P. in the conclusion he comes to, “that taking the declaration out of the office was NOT a waiver of the irregularity in the notice.” T. P. must allow that a declaration in “trespass” is not a declaration in “trespass on the case;” and if notice is given that a declaration of a plea of “trespass on the case” is filed, and the defendant on searching at the office finds no such declaration, but that there is a declaration of a plea of “trespass,” and he then chooses to conclude that the declaration in “trespass” is the one of which he had notice, and takes it out; it seems to me, with all due respect to the authorities cited by T. P., that a rule to set aside the notice of declaration for such a variance, would be very properly discharged, on the ground that by taking the declaration out of the office, the defendant had waived the irregularity.

Oct. 2, 1832.

MEMOIR OF JAMES STEPHEN, Esq.

THIS eminent individual, late one of the Masters in Chancery, died at Bath on the 10th of October last, at the age of 74. It has been stated by one of our contemporaries that he was descended from a respectable family in the county of Aberdeen; that he was born at Poole, in Dorsetshire, educated at Winchester, and that his father was at the Bar. There are several inaccuracies in this account.

Mr. Stephen was born in the year 1758, and educated at Aberdeen. His father was a West India merchant. The subject of this memoir entered as a student at Lincoln's Inn, and during his preparation for the Bar was engaged as a Reporter for the Public Press. In after life, when sitting as a member of the Senate, he avowed, with a candid and honourable spirit, the occupation in which he had thus been engaged, and zealously vindicated the respectability, as well as the talent, of the body to which he had belonged. This was worthy of his character for sincerity, and has been warmly appreciated by those who were ungenerously attacked. It has also materially contributed to prevent the growth of those restraints on admission to the Bar, which it was becoming the fashion to impose.

Soon after being called to the Bar, Mr. Stephen, probably on the strength of his Father's connexions in that part of the world, went to the West Indies, and practised at St Kitt's for eleven years, where he was very extensively engaged. On his return to England, he was chiefly retained in appeals from the Colonies, and in preparing cases for the Privy Council.

He was the author of a Digest of the Laws of the Colonies,—a Book of authority, and ably written. The publication, however, for which he was most celebrated, was a pamphlet entitled "War in Disguise; or the Frauds of Neutral Flags." No work of a political or commercial nature was more noticed than this, and it soon led to Mr. Stephen's introduction to Parliament for one of the Government boroughs. He took his seat for Tralee, in Ireland, in 1809, and afterwards represented East Grinstead. He was particularly distinguished as one of the best speakers on the question of Neutral Flags; and soon after coming into Parliament, assisted the Government with suggestions in forming their system of blockade, which had so material an effect upon the late Continental war.

He was one of the ablest and most active

opponents of the Slave Trade; and amongst other exertions, he devised a plan for registering slaves, which has since been adopted with great success in checking the unlawful traffic. He was at all times a formidable opponent of the whole system, and both by his public exertions and his remonstrances with men in power, he did much to expose the oppressions of slavery; and his high character and acknowledged experience gave great weight to his representations.

The first cause of his disagreement with Government was this:—In 1812, shortly before the United States of America declared war against England, the ministry of Mr. Perceval, and afterwards of the Earl of Liverpool, made what were considered unworthy concessions to the States, in order to conciliate them and remain at peace. The last sacrifice made by Government was the repeal of the Orders in Council, which affected the carrying on of trade of neutrals. Great Britain waived her long established rights as a belligerent. Mr. Stephen was strongly opposed to those concessions. The measure was to be debated one evening when Mr. Stephen had prepared an argumentative speech, founded upon facts and cases in point, extracted from the Reports of Causes tried in the High Court of Appeal. He arrived in the lobby loaded with folios to prove his case, when Lord Castlereagh met him and declared the Cabinet had determined to give up the point, and repeal the Orders in Council without attempting their defence, requesting the honorable member therefore to desist from his well meant line of argument. Mr. Stephen, who had bestowed much labour on the subject, was so much disgusted that he hardly ever spoke again in the House.*

His claims upon the administration were not however overlooked. In 1813, he was appointed a Master in Chancery, by the influence of Mr. Perceval; and it appears that an offer of the Attorney Generalship, or a Puisne Judgeship, had been made, both of which he declined.

He withdrew from Parliament in 1814, and devoted himself to his duties as a Master in Chancery; from which, after seventeen years meritorious labor, he retired in 1830. In his office it is known that he was particularly scrupulous on the subject of copies and gratuities, at a time when those matters were less unpopular than they are at present.

* Morning Herald, 19th Oct. 1832.

He was twice married. By his first wife he had six children, four sons and two daughters; namely, the present Mr. Serjeant Stephen; Mr. James Stephen, formerly of the Chancery bar, and now in the Colonial Office; the Rev. J. Stephen; and Mr. George Stephen, a solicitor. One of his daughters married Mr. Garratt of the Chancery bar, and the other Mr. Dicey. His second wife was the sister of Mr. Wilberforce, a lady of eminent charity. She died without children, and left 200*l.* a year to her husband and brother, to be appropriated to benevolent purposes.

Mr. Stephen was universally respected by the members of the Profession, for his great knowledge of the duties of his important office, for his patient attention in the performance of those duties, and his general urbanity to the parties who attended him. We should willingly express the praise which is due to him in all the relations of life, and enter on the examination of his intellectual attainments apart from those of a lawyer; but we have sought information only in the latter character, and close our notice with unfeigned respect for his memory. —

COURTS OF REVISING BARRISTERS.

SINCE the last report of proceedings in these Courts, the following are the principal points which have occurred on the construction of the Act. Some new claims have arisen under the 25th section, to vote for counties in right of leaseholds, within the limits of cities or boroughs. These claims have been disallowed.

The point is not yet settled whether claims should be allowed, which appear objectionable in the opinion of the Court, but have not been opposed by the overseers or any other person.

The names of claimants inserted in the Lists *after* they were removed from the church-door, have been struck out.

On the question of claims depending on *residence*, there must be a continued occupancy for six months; but it seems, that where a regular establishment as a residence is kept up, it will be sufficient; but an occasional residence of twelve weeks in the course of twelve months will not do. The measurement of the place of residence within seven miles of the premises claimed for, is to be taken in a straight line.

The period of holding the freehold in

respect of which the claim arises, is estimated from the time stated in the contract for the completion of the purchase.

It has been decided in the case of the shareholders of the freehold interest in the Kennett and Avon *Canal Company*, that they cannot vote individually, because the property is vested in the Company as a *Corporation aggregate*. On another question, raised as to old and new share-holders, it was held, that the shares being declared *personal* property, did not confer a vote in respect of the freehold.

The names also of holders of shares in Gas Companies have been expunged, where they did not appear in the Rate Book.

On the question whether personal service of an objection by the party objecting, be necessary, it has been decided in the negative, except where the person objecting delivers an objection to his tenant in occupation, in which case the act requires personal service.

THE FIRST DAY OF TERM.

ON Thursday the Vice Chancellor commenced his sittings, it being the First Seal before Term: and yesterday Michaelmas Term began, with all its usual formalities. The difference between Westminster Hall in Term time, and out of Term time, is very striking. On Thursday last, some stray passenger was its solitary tenant. As he pursued his way, Echo followed his footsteps, and he stepped out of the little wicket in Palace Yard, almost as from a tomb. On Friday, had he retraced his steps, he would have found the large portals thrown back; a dense crowd assembled; voices gay, loud, and eager in the expectation of the pageant of the day: he would have seen a singular admixture of people of business and pleasure; of persons drawn there by simple curiosity, and persons whose all was to be settled in a few days on that spot. He might have marked the many pleasant meetings which took place around him; he might also have observed some looks not so pleasant: he would there have seen all the varieties of legal costume: the silken honours of the King's Counsel; the glossy freshness of the unsophisticated junior, armed *cap-a-pie*, for the first time, inwardly exclaiming, *Ed io anche son avvocato*. All at once he would have seen the procession enter the Hall; he would have seen before him the men of

all others entitled to be honored and respected; who had won their honors by their talents and character:—All this he would have seen, and much more, had he chosen Friday instead of Thursday for passing through Westminster Hall.

SUPERIOR COURTS.

King's Bench—Practice Court.

TRESPASS.—COSTS.—PLEADING.—GENERAL ISSUE.—LIB. TEN.

Trespass for breaking and entering plaintiff's close: Pleas, lib. ten., and four special pleas: Replication, issue on all the pleas, and a new assignment: Judgment by default on all the trespasses newly assigned, and a relinquishment of the four last pleas, as far as they related to the newly assigned trespasses: One shilling damages assessed on the judgment by default: Record went down for trial, and verdict found for plaintiff on the plea of lib. ten., and for the defendant on all the other pleas: Held, that as the defendant had left the plea of lib. ten. to the declaration on the record, the plaintiff was forced to go down to trial, and therefore was entitled to the general costs of the cause.

Campbell shewed cause against a rule for reviewing the Master's taxation. The present was an action of trespass for breaking and entering the plaintiff's close. There was no general issue. The first plea was *liberum tenementum* in Sir George Chetwynd, under whom the defendant justified; the second, a public footway; the third, a public cart way; the fourth, an easement for watering cattle at a pool in the close; the fifth, a right of common of pasture, appurtenant to a certain other close. The plaintiff replied, by taking issue on the various pleas, and new assigned, that the plaintiff brought his action, not only for the trespasses justified in the second, third, fourth, and fifth pleas, but for that the defendant broke and destroyed the trees, and entered the close for other purposes, and injured the land to a greater degree and extent than necessary. The defendant suffered judgment by default to the trespasses newly assigned, and relinquished his second, third, fourth, and fifth pleas, as far as they related to the trespasses newly assigned. The cause went down for trial, and a verdict was found for the plaintiff on the plea of *liberum tenementum*, and for the defendant on all the other issues, and one shilling damages were assessed to the plaintiff on the judgment by default to the new assignment. The Master allowed the plaintiff his costs of the issue on the plea of *liberum tenementum*, and of assessing the damages; and

allowed the defendant his costs of all the other pleas, and of the witnesses in support of them. Setting off the costs on the one side against those on the other, left a balance in favor of the defendant, which the Master directed to be paid to him. The Master said, that if the plea of *liberum tenementum* had not been on the record, he should have allowed the defendant the general costs of the cause. It is contended now, that the Master should have allowed the defendant the general costs of the cause, and only allowed the plaintiff the costs of assessing the damages on executing the writ of inquiry. It is perfectly clear, however, that the Master was quite correct in his taxation, both on principle and on authority. If there had been a general issue on the record, which had not been withdrawn, it is quite clear the plaintiff would have been entitled to all the costs of the trial, because the plaintiff is obliged by the plea of the general issue to go down to trial. He cited *House v. The Treasurer of the Commissioners of the Navigation of the River Thames and Isis*^a; *Vickers v. Gallimore*^b; *Longden v. Bourne*^c; and *Broadbent v. Shaw*^d. Now the plea of *liberum tenementum* is only a special plea of not guilty. For if the soil and freehold of the close were in Sir George Chetwynd, it is clear no trespass could have been committed to the plaintiff's freehold. The plaintiff therefore was forced to go down to trial. It is indivisible; and therefore the issue, as to the new assignment, could not have been withdrawn by the plaintiff. The relinquishment by the defendant of the second, third, fourth, and fifth pleas, as far as they related to the trespasses newly assigned, was no relinquishment of the plea of *liberum tenementum*, as to the new assignment. The plaintiff therefore could not avoid going down to trial, in that state of the record, and therefore he was entitled to the general costs of proving his case.

Whately, contra, contended, that the damages in this case might have been assessed before the sheriff's jury, and therefore the plaintiff, not being obliged to go down to trial, could only be entitled to the costs on executing the writ of inquiry.

Patteson, J.—I have always understood the principle to be this, in the present state of the record, that where a plaintiff might have withdrawn all the issues, because he must fail on them, except those on which judgment by default had been suffered, he is not entitled to any more costs on those issues on which he succeeds, than those to which he would be entitled on executing a writ of inquiry. But here he could not have withdrawn the issue on the plea of *liberum tenementum*; for if he had, he would have confessed that the soil was in Sir George Chetwynd, and not himself, and thus precluded himself from disputing it in

^a 3 Brod. & Bing. 117.

^b 5 Bing. 196.

^c 1 B. & C. 278.

^d 2 B. & Adol. 940; and 1 Dowl. Prac.

another action between him and the defendant. And why should he withdraw that issue, since it was the only one on which he succeeded? Then he could not withdraw it in part, as to the new assignment, because the plea was indivisible. The present rule must therefore be discharged.

Rule discharged.—*Furterer v. Hale*, 11th May, 1832. K. B. P. C.

ATTORNEY'S UNDERTAKING.

An attorney who is party in a cause, giving an undertaking to the sheriff in that cause, is not liable to have that undertaking summarily enforced by the Court.

B. Andrews shewed cause against a rule obtained by *Kelly*, for enforcing the payment of 85*l.* by a Mr. T——, an attorney of the Court, pursuant to his undertaking. An action had been brought against the sheriff and one of his officers, for seizing certain goods of a person named Northfield, at the suit of Mr. T., an attorney. Notice not to sell was given to the sheriff. On application to Mr. T——, he gave his own undertaking as an indemnity, and the goods were accordingly sold. The action proceeded against the sheriff, and the plaintiff ultimately obtained a verdict. The application now was on the part of the sheriff, to enforce Mr. T——'s undertaking summarily, on the ground that he was an attorney of the Court, and therefore liable to its summary jurisdiction. No case, however, went the length of deciding that the Court would interfere summarily to enforce the undertaking of an attorney who was party in a cause, merely on account of his being an attorney. The undertaking here was not given as an attorney at all; for he was a party in the cause. The fact of his being an attorney was no ground for the summary interference of the Court, unless he had acted in that character when he gave the undertaking. He cited the case of *Walker v. Arlett*^a, where it was held, that an attorney giving an undertaking for another, in a cause in which he is not concerned as attorney, will not be forced summarily to fulfil it, but the party to whom it is given will be left to his action.

Kelly, contra, submitted, that the sheriff only accepted the undertaking on the ground of Mr. T—— being an attorney, and therefore the Court might interfere to enforce it against him, without driving the party to the circuitry and expense of bringing an action.

Thurston, J.—The difficulty I feel is, as to the authority of the Court to interfere. I don't know of any instance in which a party in a cause has been held to subject himself to the summary jurisdiction of the Court, merely on account of his being an attorney.

Rule discharged.—*Northfield v. Orton and Male*, May 11th, 1832. K. B. P. C.

DOUBLE COSTS.—COURT OF REQUESTS.—MAGISTRATES.

Commissioners of a Court of Requests, who have power to commit for contempt, are not within the 42 G. 3. c. 85, § 6, which extends the 21 Jac. 1. (giving double costs) to all persons empowered to commit to safe custody; and therefore, where trespass for false imprisonment is brought against them for an act done in the execution of their office, and the defendant is nonsuited, they are not entitled to double costs.

Follett, on a former day, had obtained a rule calling upon the plaintiff in an action to shew cause why he should not pay to the defendants double costs, under the following circumstances: By a local act of the 45 G. 3. c. 67, a Court of Requests was established for the city of Bath and places adjacent, and certain persons were appointed Commissioners of the Court. By section 46. it was provided, that if any person should wilfully insult or abuse any of the Commissioners during the sitting of the Court, the serjeant of the Court, by the order of the Commissioners, might take the offender into custody, and then the Commissioners, upon examination of the offender, might impose a fine, to be levied by distress, or for want of a sufficient distress, the offender might be committed to the common gaol or house of correction, for a period not exceeding one month. The action out of which the present motion sprang, was an action of trespass brought against one of the Commissioners and two officers of the Court, for pushing the plaintiff out of the Court into the street. The defendants pleaded the general issue, and several special pleas, stating in substance that the plaintiff was turned out of the Court because he abused the Commissioners in the performance of their duty, and refused to desist when requested so to do. The plaintiff took issue upon all the pleas, and new assigned, as to all the special pleas, upon which there was a demurrer for duplicity, which came on to be argued, when the Court gave judgment for the defendants on the demurrer, with leave for the plaintiff to amend. The plaintiff, however, did not amend, and ultimately the defendant obtained judgment as in case of a nonsuit, on account of the plaintiff not having proceeded to trial on the general issue. The motion for double costs was grounded on the 42 G. 3. c. 85, which was entitled, "An act for the trying and punishing, in Great Britain, persons holding public employments, for offences committed abroad, and for extending the provisions of an act passed in the 21st year of the reign of King James, made for the ease of justices and others in the pleading in suits brought against them, to all persons, either in or out of this kingdom, authorized to commit to safe custody." And by section 6, reciting that it was expedient to extend the provisions of the 21 Jac. 1. intituled, "An act to enlarge and make perpetual the act made for ease in pleading against troublesome and contentious suits prosecuted against justices of the peace,

mayors, constables, and certain other his Majesty's officers, for the lawful execution of their office, made in the seventh year of his Majesty's most happy reign, to all persons who may by law commit to safe custody, either in or out of this kingdom;" it was enacted, that from and after the passing of that act, the said recited act, and all the provisions therein contained, should extend to all persons *having, holding, or exercising, or being employed in, or who might hereafter have, hold, or exercise, or be employed in any public employment, or any office, station, or capacity, either civil or military, either in or out of this kingdom, and who under and by virtue or in pursuance of any act or acts of parliament, law or laws, or lawful authority, within this kingdom, or any act, &c. or lawful authority, in any plantation, island, colony, or foreign possession of his Majesty, now have or may hereafter have by virtue of any such public employment, or such office, station, or capacity, power or authority to commit persons to safe custody*; and all such persons having such power or authority as aforesaid, shall have and be entitled to all the privileges, benefits, and advantages given by the provisions of the said act, as fully and effectually to all intents and purposes as if they had been specially named therein. The 21 Jac. 1. c. 12. § 5, above referred to, gives double costs to the justices, &c. defendants in any action sued for any thing done by them by reason of their office, in all cases where the plaintiff has become nonsuit, or suffered a discontinuance. It was suggested by *Follett*, that the defendants in the present action were persons authorized to commit, within the meaning of the 42 G. 3. c. 85. He also referred to the case of *Blanchard v. Bramble*, 3 M. & S. 131, in which it was held, that where the defendant obtained judgment as in case of a nonsuit, the defendant was equally entitled to double costs as if the plaintiff had been nonsuited on the trial; and upon an affidavit disclosing these facts, and showing that the action was for an act done by the defendants in the execution of their office, the Court granted the rule.

S. Hughes now showed cause; and after observing that the defendants did not come within any of the acts which gave double costs to justices of the peace and constables and persons acting in their aid and assistance, he contended, first, that the 42 G. 3. c. 85, did not apply to the present case; and secondly, that the local act of 45 Geo. 3, had made an express provision respecting costs. Upon the first point, he submitted, that though the local act of 45 Geo. 3, gave power to the commissioners to commit to prison under certain circumstances, they were not such persons as were intended by that act, under the designation of persons having power to *commit to safe custody*: that was a peculiar expression, and did not apply to the defendants, who committed to prison, not for the purpose of safe custody, but by way of punishment: at all events, he contended, that two of the defendants, who were merely officers of the Court, were not protected, inasmuch as they had no power of

themselves to commit to custody; and that, he argued, was another reason for presuming that that act was not intended to apply to this case, inasmuch as the mere officers of the Court, who were most in want of protection, were not mentioned in the act; whereas the 21 Jac. 1, c. 12, and the other acts for the protection of justices of the peace and constables, expressly included all persons who acted in their aid and by their command. Upon the second point, he quoted the 56th section of the local act (45 Geo. 3, c. 67, which established the court) and which, after directing that such actions should be commenced within three calendar months, and after forty-two days notice, enacted, that if the plaintiff should be nonsuited or discontinue his action, or if, upon demurrer, judgment should be given against the plaintiff, then the defendants *shall recover costs, and have such remedy for recovering the same as any defendant hath for costs of suit in other cases by law*. He contended, that the costs here mentioned meant common costs; and that if double costs had been intended, they would have been mentioned especially, as this act was passed three years after the 42 Geo. 3.

Patteson, J. (after hearing *Follett* in reply.)—It seems to me, that the 42 Geo. 3 was not intended to apply to the present case. It is remarkable that the act does not speak of persons acting in aid and assistance: and it has been admitted, that so far the act does not apply, inasmuch as two of the defendants were mere officers of the Court: as to the other defendant, is he a person authorized to commit to safe custody, within the meaning of the act? I think not. Magistrates who do not commit persons as a preliminary act to their taking their trials, are not said to commit to safe custody. And when I look at the local act I find, that though it specifies time, it does not mention double costs. Upon the whole, it appears to me, that these defendants do not come within the 42 Geo. 3, and the rule must therefore be discharged.

Mackey v. Goodden, Esq. and others. June 23, 1832. K. B. P. C.

PUIS DARREIN CONTINUANCE.—BANKRUPTS' ASSIGNEE.

A plea puis darrein continuance of the plaintiff's bankruptcy, cannot be pleaded till the execution of the assignment to the assignees; and where the assignment was executed on the day of the last continuance in bank, and the defendant did not plead the plea till the assizes, the Court refused to set it aside, as it did not appear that the assignment was executed sufficiently early to allow the defendant to plead it on the last continuance day.

Dodd moved for a rule to shew cause, why the plea of the plaintiff's bankruptcy, which was pleaded *puis darrein continuance*, at the last assizes, should not be set aside, and why the defendant should not pay the plaintiff the costs

of going down to trial at the assizes. The action was brought for negligence as a bailee, in not taking care of coaches and other property delivered to be kept. The general issue was pleaded. Notice of trial was given on the 6th Feb. 1832, for the next assizes, and at the assizes the defendant pleaded that the plaintiff became bankrupt after the last continuance. The plea was bad, since the matter in fact arose before the last continuance, and might have been pleaded in bank, which would have saved the plaintiff the heavy expense of going down to trial. The last continuance before the assizes was the 31st January, the last day of Hilary Term, and the return day of the *venire facias*. The commission of bankruptcy issued on the 31st December, 1831. The plaintiff was adjudged a bankrupt on the 3d January following, and the assignment to the assignees was on the 31st January, the same day as the last continuance. It might be doubtful whether the plea could have been pleaded before the assignment; but it might have been pleaded on that day, or the defendant, by applying to a Judge after term, might have been allowed to plead it *nunc pro tunc*, instead of letting the plaintiff go to trial, and giving him no notice of any other plea than the general issue.

Littledale, J.—It is quite clear the plea could not have been pleaded before the assignment, as the cause of action was not divested out of the bankrupt till the assignment was executed; and then it did not appear at what time on the 31st January the assignment was executed. It might have been executed so late, that the plea could not possibly have been pleaded on that day.

Rule refused.—*Bretherton v. Osborne*. 15th June, 1832. K. B. P. C.

SCI. FA.—BAIL.—SUMMONS.

The Court will not allow judgment to be signed for non-appearance to a sci. fa. against bail, unless it is shewn that the bail have been summoned, or that efforts, and what efforts, have been made to summon them.

V. Richards applied to enter up judgment on a writ of *sci. fa.* against bail, under R. 81, of 1 Reg. Gen. H. T. 2 W. 4. The words of that rule were, that "no judgment shall be signed for non-appearance to a *sci. fa.* without leave of the Court or a Judge, unless the defendant has been summoned; but such judgment may be signed by leave after eight days from the return of one *sci. fa.*" The affidavit on which he moved stated, that the *sci. fa.* had been issued on the 19th of May; that the sheriff returned "nihil," and that no common bail had been filed, although eight days had expired.

Patterson, J.—Your affidavit should state, that the bail had been summoned, or that efforts had been made to summon him, and what those efforts were.

Rule refused.—*Higgins v. Wilkes*, T. T. June 12, 1832. K. B. P. C.

PRISONER.—CREDIT.—MERITS.

Unless it is perfectly clear, that an action is brought for goods sold and delivered, before the agreed credit has expired, the Court will not set aside the writ on motion.

Wightman shewed cause against a rule for setting aside a *latitat*, on the ground, that the action was brought before the credit on which the goods were sold had expired. He had an affidavit, the effect of which was, that the credit had expired before the action was brought; these were merits, which the Court would not try on motion. There was the case of *Kerr v. Dick*^a, in which an action was brought on a bill of exchange before it was due; and there the Court interfered, as was required by the present motion. There, it was quite clear, that the credit had not expired, and therefore there was a ground for the Court interfering; but here it was a disputed point between the parties; it was merits, and those the Court would not try on motion.

Busby, contra, cited the case of *Kerr v. Dick*, as precisely in point; and contended that the defendant would be subjected to great hardship, if the Court would not relieve him thus on motion; for if the cause went down to trial, the defendant would not be at liberty to shew that the cause of action accrued after the writ had issued, provided it accrued before bill filed^b.

Patterson, J.—This is merely an experiment, and I can't encourage it. Unless it clearly appears, that the party has been arrested before the period of credit has expired, I cannot interfere. My discharging this rule does no harm to the defendant, because, if the credit really had not expired before the action was brought, it will be a good defence to the action. It is, however, disputed, that the period of credit has expired, and therefore, were I to go into the question on the affidavits, I should be trying the merits of the cause on motion.

Rule discharged with costs.—*Lamb v. Pegg*, June 12, 1832. K. B. P. C.

SERVICE OF DECLARATION IN EJECTMENT.

What is a sufficient service in ejectment.

Dodd moved for judgment against the casual ejector. The affidavit stated, that enquiry had been made for Cook, one of the tenants on the premises, and it was found, that he and his wife and children had left the premises, as it was understood, to embark for America; that the wife and children had actually embarked, and it was believed that Cook had wholly quit- ted the premises, and did not intend to return. The declaration had been affixed on the door of Cook's house, on the premises, and had also been delivered and read over and explained to a person on the premises, who was servant to one of the tenants of other part of the pre- mises. The affidavit did not state that Cook

^a 2 Chit. Rep. 11.

^b *Best v. Wilding*, 7 T. R. 4; *Swancott v. Westgarth*, 4 East, 75.

had left the premises to avoid being served with the declaration.

Patteson, J.—You may take a rule to shew cause, and serve it in the same manner as the declaration was served.

Rule granted.—*Doe d. Osbaldiston v. Roe.*
14th June, 1832. K. B. P. C.

NOTES OF THE WEEK.

LORD TENTERDEN.

The rumour has again revived, of the resignation of the noble and learned Chief Justice of the King's Bench. We have received no authentic information on the subject, and are therefore not inclined to believe it. If, however, it be once confirmed, we shall feel it our duty to make some remarks as to his proper successor. The important office of Chief Justice of England is not to be given away on mere political grounds: it is not a mere bauble, that is to be presented to any person whom the tide of party has hoisted into eminence; the profession and the public have a right to demand, that the person the most fitted from his experience and talents shall fill the office. If need be, we shall soon return to this subject.

CHAIRMAN OF THE MIDDLESEX SESSIONS.

The successor of Mr. Const has at length been appointed. The choice has fallen on Mr. Marriott.

THE SITTINGS OF THE MASTER OF THE ROLLS, IN AND AFTER MICHAELMAS TERM, 1832,

Will take place in the Mornings at Ten o'clock.

Friday,	Nov. 2	{ At Westminster, at 1 o'clock.— Petitions in the General Paper, and Causes and Furs. Dirs. by consent.
Saturday,	3	{ At Westminster.—
Monday,	5	{ Causes, Further Directions, and Ex-
Tuesday,	6	{ ceptions in the Ge-
Wednesday,	7	{ neral Paper.
Thursday,	8	

Friday,	9	{ At Westminster.— Causes, Further Directions, & Petitions by Consent; & Causes, Further Directions, & Exceptions in the General Paper.
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Saturday,	Nov. 10	{ At Westminster.—
Monday,	12	{ Causes, Further Directions, and Ex-
Tuesday,	13	{ ceptions in the Ge-
Wednesday,	14	{ neral Paper.
Thursday,	15	

Friday,	16	{ At Westminster.— Causes, Further Directions, & Petitions by Consent; & Causes, Further Directions, & Exceptions in the General Paper.
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Saturday,	17	{ At Westminster.—
Monday,	19	{ Causes, Further Directions, and Ex-
Tuesday,	20	{ ceptions in the Ge-
Wednesday,	21	{ neral Paper.
Thursday,	22	

Friday,	23	{ At Westminster.— Causes, Further Directions, & Petitions by Consent; & Causes, Further Directions, & Exceptions in the General Paper.
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Saturday,	24	{ At Westminster.—
Monday,	26	{ Causes, Further Directions, and Ex-
		{ ceptions, in the Ge-
		{ neral Paper.

Tuesday	27	{ At the Rolls.— At 10 o'clock, to swear in Solicitors, and General Petitions.
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Wednesday,	28	{ At the Rolls.— Short Causes.
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Thursday,	29	{ At the Rolls.— Causes, Further Directions, & Exceptions in the General Paper.
And on the subsequent Days, till the last Seal.		

On the day after the last Seal at the Rolls, on Petitions.

Causes, Further Directions, and Petitions, by Consent, will be heard every Friday during the Seals.

The Sittings at Westminster will be in his Honor's new Court.

The entrance faces Saint Margaret's Church.

. The Sittings of the LORD CHANCELLOR and VICE CHANCELLOR were stated, Vol. IV, p. 249.

REGULATIONS FOR THE ENTRY AND TRIAL OF CAUSES IN THE EXCHEQUER OF PLEAS.

Michaelmas Term, 1832.

The entry of causes closes two days before the sitting day, for which the causes are to be entered at 8 in the evening. But when the sitting day is on Monday, the entry closes on the previous Friday. For Tuesday, on the previous Saturday.

Both defended and undefended causes will be tried in Term.

No Special Jury Causes will be tried in Term.

The Marshal and Associate's Office, No. 4, King's Bench Walk, Temple, will be open from 11 till 3, and from 6 to 8

There are 47 Remanets in London, including 12 Special Juries; and 12 Remanets in Middlesex.

ANSWERS TO QUERIES.

Law of Property and Conveyancing.

COPYHOLD.—ADMISSION. VOL. IV. P. 399.

A custom generally prevails, in almost every manor, that whenever any copyhold property becomes vested in the heir by descent, a fine becomes payable to the lord, which if the heir does not pay and get admitted, the lord, after the usual proclamations, may seize the land, and take it into his own possession; consequently it is necessary that the heir at law of A. B. should be admitted, and pay the fines, on the decease of his brother and nephew. As to the widow's free bench, if the custom of the manor sanctions it, a fine is payable on her admittance; but in some manors, no fine is due upon such admission. T. T. P.

DOWER.—MORTGAGE. VOL. IV. P. 415.

The cases and references cited by your correspondents G. R. F. and E. M. are not applicable to the query in point; the authorities which they adduce, relate to instances where a *feme covert* joins her husband in levying a fine to bar her dower on a mortgage of his estate, which while existing is made the subject of a contract with a purchaser, whether such purchaser can insist on the mortgagor levying another fine: but in the present case, the mortgagee re-conveyed directly to the mortgagor, whereby the equitable estate became merged in the legal, which consequently restores A.'s wife's title to dower. M.

Law of Landlord and Tenant.

NOTICE TO QUIT. VOL. IV. P. 416.

The legal estate being vested in C., the mortgagee, B. is, of course, in the eyes of the law, considered as tenant to C., and A. could not enter into any contract with B., without the consent of C.; but although the mortgagee can at law make a valid lease, or contract of any description, with the tenant of the mortgagor, yet such lease or contract will not in equity bind the mortgagor; where therefore lands or premises are mortgaged, or any contract or agreement is entered into with the tenant or occupier of such premises, both the mortgagor and mortgagee should be made a party thereto. I conceive, in the present case, that there being no agreement, or at least only a parole one, it would be advisable for the tenant to give notice to quit, to both A. and C. jointly. H. B. A.

TRESPASS. VOL. IV. P. 416.

In most leases, especially in farming ones, a power is introduced which authorizes the lessor to enter the land and premises, for the purpose of seeing what necessary reparations may be wanting; but in the absence of such proviso, I consider, according to law, a landlord would have no more right to trespass upon the premises of his tenant than a stranger, without the consent of his tenant: but in equity, it is certainly reasonable and proper that a landlord should have such privilege; nor do I think any tenant could support an action against a landlord for such trespass, without some injury was sustained by his tenant, for such infringement. H. B. A.

Common Law.

ESCAPE. VOL. IV. P. 416.

It is stated by Mr. Impey, in his "Office of Sheriff and Coroner," p. 164, "If the prison takes fire, by means whereof the prisoners escape, this shall excuse the sheriff, and he may plead it. 3 E. 6. 66. 15. Roll. Abr. 808." I apprehend the lock-up house of a sheriff's officer would be held to be a "Prison," and that the sheriff would be excused in case of a fire. J. B. F.

QUERIES.

Common Law.

STATUTE OF LIMITATIONS.

Goods are sold and delivered on the 1st Oct. 1826. No subsequent admission of the debt. Will a writ issued on the 1st Oct. 1832, save the Statute of Limitations? R. N.

SET-OFF.

In an action commenced by an auctioneer against a purchaser, for the price of goods sold and delivered at an auction, is such purchaser entitled to set off a debt due to him from the alleged owner of the goods? MANCUNIENSIS.

FEMME COVERT.

Can a married woman, who has lived separately from her husband some years, sue in her own name, for a debt due to her? If she must sue in her husband's name, and the money be recovered, to whom is the defendant bound to pay the money? or what means can be used, so as to secure the same? The debtor is aware of her living separate from her husband. If she cannot succeed by action, would the better way be to summon for *ll. 19s. 6d.*?

C. D. E.

ARREST.—LUNATIC.

Can a lunatic, confined as such in an asylum, be arrested for a debt at common law? And is the person or keeper, under whose protection he is, justified in detaining him in his custody, after the sheriff's officer has made his caption? And if a lunatic may be arrested for debt, is the sheriff's officer justified (he knowing that the lunatic is within the asylum) in searching for him, in case of a refusal to allow the lunatic to be seen by him?

T. B.

Law of Attorneys.**LIABILITY FOR DEEDS.**

Can an attorney plead the Statute of Limitations to an action of trover, commenced against him for recovery of title deeds professionally entrusted to him twelve years ago, and which he appears to have subsequently lost? and if so, has the client no other remedy against him to obtain satisfaction?

R. N.

Law of Property and Conveyancing.**MORTGAGE.—ANNUITY.**

A. mortgages his estate to *B.* in fee for 2000*l.* He afterwards settles the estate upon *C.*, for securing 100*l.* per annum, upon certain contingencies, without mentioning or giving notice of his prior incumbrance. *A.* conveys the equity of redemption to *D.*, who pays off the 2000*l.*, and afterwards mortgages the estate for 3000*l.* The contingencies having taken place, *C.* is entitled to the 100*l.* a year. Has he any, and if so, what means of recovering the money?

R. N.

LEASE.—STAMP.

It was formerly held, that a lease for years, in consideration of a sum certain, and at a pepper-corn rent, was not a conveyance, and consequently did not require an *ad valorem* stamp. See *Roe v. Chenhalls*, 4 M. & S. 23. Under the 55 G. 3. c. 184, it appears clear such stamp would be required. I should be

glad, however, if any of your correspondents could refer me to a case in point.

MANCUNIENSIS.

VENDOR AND PURCHASER.

Where there is a trust for sale, and the cestuis que trust are infants, or otherwise incapacitated from joining in the conveyance, can the purchaser, in the absence of any clause for that purpose, safely rely on the receipt of the trustees for his discharge, without the prior sanction of a Court of Equity?

Poor Rates.**SETTLEMENT.**

A child under twenty-one, residing with her father and mother, and having gained no settlement in her own right, or in other words, not being emancipated, becomes ill, and the father and mother are unable to give her any assistance. Who should apply to the parish where they happen to reside, for assistance—the child or her parents? And have the magistrates any power to pass the *child* to the parish of the parents, like a person who has gained a settlement in his own right?

A SUBSCRIBER.

Law of Elections.**REFORM ACT.—NOTICES OF OBJECTION.**

Where *A. B.*, an overseer, resides in one part of a dwelling house, the other part whereof being occupied by *C. D.*, and there being only one entrance door; *E. F.* goes to the house at a late hour on the 25th Sept., to serve notices of objections on the overseer, and on knocking at the outer door, is attended by *C. D.*, who states that the overseer has retired to bed, whereupon the notices are delivered to *C. D.*, who on the following morning hands them to *A. B.*, the overseer. Is the service legal? and is the overseer bound to publish his list?

T. M. J.

Law of Landlord and Tenant.**FIXTURES.**

Can the executor of a tenant in fee establish a right, as against his heir, to fixtures set up for ornament or domestic convenience? and is not the law in this respect more favorable to the devisee than the heir of the testator, as in the analogous case of emblements?

DISTRESS.

Can a mortgagee *distrain* for rent due upon a lease made *after* the mortgage?

MANCUNIENSIS.

MISCELLANEA.

TORTURE AND EXECUTION OF RAVAILLAC.

He was ordered to be put to the torture of the brodequin^a, and the first wedge being drove, he cried out, "God have mercy upon my soul, and pardon the crime I have committed: I never disclosed my intention to any one." This he repeated, as he had done in his interrogation.

When the second wedge was drove, he said with loud cries and shrieks, "I am a sinner. I know no more than I have declared by the oath I have taken, and by the truth which I owe to God and the Court: all I have said was to the little Franciscan, which I have already declared. I never mentioned my design in confession, or in any other way. I never spoke of it to the visitor of Angoulême, nor revealed it in confession in this city, I beseech the court not to drive my soul to despair."

The executioner continuing to drive the second wedge, he cried out, "My God, receive this penance as an expiation for the great crimes I have committed in this world. Oh God! accept these torments in satisfaction for my sins. By the faith I owe to God, I know no more than what I have declared. Oh! do not drive my soul to despair."

The third wedge was then driven lower near his feet, at which a universal sweat covered his body, and he fainted away. The executioner forced some wine into his mouth, but he could not swallow it; and being quite speechless, he was released from the torture, and water thrown upon his face and hands. Some wine being forced down his throat, his speech returned, and he was laid upon a mattress in the same place, where he continued till noon. * * *

When he had ascended the scaffold, the two doctors comforted him, and exhorted him to acknowledge the truth; and after performing the duties of their function, the clerk approached him, and urged him to think of his salvation, now at the close of his life, and to confess all he knew; to which he only answered as he had done before. The fire being put to his right hand, holding the knife with which he had stabbed the king, he cried out, Oh God! and often repeated *Jesu Marie!* While his breast, &c. were tearing with red-hot pincers, he renewed his cries and prayers; during which, being often admonished to acknowledge the truth, he persisted in denying that he had any accomplices. The furious crowd continued to load him with execrations, crying that he ought not to have a moment's respite. Afterwards, by intervals, melted lead and scalding oil were poured upon his wounds; during which he shrieked aloud, and continued

his cries and exclamations. The doctors again admonished him, as likewise the clerk, to confess, and were preparing to offer up publicly the usual prayers for the condemned; but immediately the people, with great tumult and disorder, cried out against it, saying, that no prayers ought to be made for that wicked wretch, that damned monster; so that the doctors were obliged to give over. Then the clerk remonstrating to him, that the indignation of the people was a judgment upon him, which ought to induce him to declare the truth, he persisted to answer as formerly, saying, I only was concerned in the murder. He was then drawn by four horses, for half an hour, by intervals. Being again questioned and admonished, he persisted in denying that he had any accomplices; while the people of all ranks and degrees, both near and at a distance, continued their exclamations, in token of their great grief for the loss of their king. Several persons set themselves to pull the ropes with the utmost eagerness; and one of the noblesse, who was near the criminal, alighted off his horse, that it might be put in the place of one which was tired with drawing him. At length, when he had been drawn for a full hour by the horses, without being dismembered, the people, rushing on in crowds, threw themselves upon him, and with swords, knives, sticks, and other weapons, they struck, tore, and mangled his limbs; and violently forcing them from the executioner, they dragged them through the streets with the utmost eagerness and rage, and burnt them in different parts of the city.

GENERAL RULES AGREED UPON
BY THE JUDGES, IN PURSUANCE
OF THE STAT. 2 W. 4. c 39.

It is ORDERED, That every Writ of Summons, Capias, and Detainer, shall contain the names of all the defendants, if more than one, in the action, and shall not contain the name or names of any defendant or defendants in more actions than one.

It is FURTHER ORDERED, That the following fees shall be taken;

For signing all Writs for compelling an appearance, whether of Summons, Distringas, Capias, or Detainer, whether the same shall be the first Writ, or an Alias or Pluries Writ, and whether the same shall issue into the same county as the preceding Writ, or into a different county, 2s. 6d.

For Sealing the same, 7d.

For entering an Appearance, for every defendant, 1s.;

Unless an Appearance shall be entered for more than one defendant by the same attorney; and in that case, for every additional defendant, 4d.

^a The brodequin was a strong wooden box, made in the form of a boot, just big enough to contain both the legs of the criminal, which being put therein, a wooden wedge was then drove with a mallet between his knees; and, after that was forced quite through, a second wedge, of a larger size, was applied in the same manner.

IT IS FURTHER ORDERED, That the person serving a Writ of Summons shall, within three days at least after such service, indorse on such Writ the Day of the Week and Month of such Service, otherwise the plaintiff shall not be at liberty to enter an Appearance for the defendant, according to the Statute; and every Affidavit upon which such an Appearance shall be entered, shall mention the Day on which such Indorsement was made.

IT IS FURTHER ORDERED, That the Sheriff or other officer or person to whom any Writ of Capias shall be directed, or who shall have the execution and return thereof, shall, within six days at the least after the execution thereof, whether by service or arrest, indorse on such Writ the true day of the execution thereof; and in default thereof, shall be liable in a summary way to make such compensation for any damage which may result from his neglect, as the Court or a Judge shall direct.

IT IS FURTHER ORDERED, That the Second Rule of Hilary Term 1832, shall be applicable to all Writs of Summons, Distringas, Capias, and Detainer issued under the authority of the said Act, and to the Copy of every such Writ.

IT IS FURTHER ORDERED, That any Alias or Pluries Writ of Summons may, if the plaintiff shall think it desirable, be issued into another county, and any Alias or Pluries Writ of Capias may be directed to the Sheriff of any other county, the plaintiff in such case upon the Alias or Pluries Writ of Summons describing the defendant as late of the place of which he was described in the first Writ of Summons; and upon the Alias or Pluries Writ of Capias referring to the preceding Writ or Writs as directed to the Sheriff to whom they were in fact directed.

IT IS FURTHER ORDERED, That the Alias or Pluries Writ of Summons into another county, shall be in the following form:

William the Fourth, &c.

To C. D. of , in the county of , late of , in the county of , [original county]. We command you, as before [or often] we have commanded you, &c. [as in the Writ of Summons, No. 1, in the Schedule of the said Act.]

And that the Alias and Pluries Writ of Capias shall be in the following form:

William the Fourth, &c.

To the Sheriff of . We command

you, as heretofore we have commanded the Sheriff of , that you omit not, &c. [as in the Writ of Capias, No. 4, in the Schedule of the said Act.]

IT IS FURTHER ORDERED, That in every Writ of Distringas issued under the authority of the said act, a Non Omittas clause may be introduced by the plaintiff without the payment of any additional fee on that account.

IT IS FURTHER ORDERED, That when the attorney actually suing out any writ, shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country, shall also be indorsed upon the said Writ.

IT IS FURTHER ORDERED, That if the plaintiff or his attorney shall omit to insert in, or indorse on, any Writ or copy thereof, any of the matters required by the said act to be by him inserted therein or indorsed thereon, such Writ or copy thereof shall not on that account be held void, but may be set aside as irregular, upon application, to be made to the Court out of which the same shall issue, or to any Judge.

IT IS FURTHER ORDERED, That upon all Writs of Capias, when the defendant shall not be in actual custody, the plaintiff, at the expiration of eight days after the execution of the Writ, inclusive of the day of such execution, shall be at liberty to declare *de bene esse*, in case special bail shall not have been perfected. And if there be several defendants, and one or more of them shall have been served only, and not arrested, and the defendant or defendants so served shall not have entered a common appearance, the plaintiff shall be at liberty to enter a common appearance for him or them, and declare against him or them in chief and *de bene esse* against the defendant or defendants who shall have been arrested, and shall not have perfected special bail.

IT IS FURTHER ORDERED, That in case the time for pleading to any Declaration, or for answering any Pleadings, shall not have expired before the 10th day of August in any year, the party called upon to plead, reply, &c. shall have the same number of days for that purpose after the 24th October, as if the Declaration or preceding Pleading had been delivered or filed on the 24th October; but in such cases it shall not be necessary to have a second rule to plead, reply, &c.

IT IS FURTHER ORDERED, That in case a Judge shall have made an order in the va-

cation, for the return of any Writ issued by authority of the said act, or any Writ of Capias ad Satisfaciendum, Fieri Facias, or Elegit, on any day in the vacation, and such order shall have been duly served, but obedience shall not have been paid thereto, and the same shall have been made a rule of Court in the term then next following, it shall not be necessary to serve such rule of Court, or to make any fresh demand of performance thereon, but an attachment shall issue forthwith for disobedience of such order, whether the thing required by such order shall or shall not have been done in the mean time.

It is FURTHER ORDERED, that if any attorney shall, as required by the said act, declare that any Writ of Summons or Writ of Capias, upon which his name is indorsed, was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed until further notice.

It is FURTHER ORDERED, that every Declaration shall in future be entitled in the proper Court, and of the day of the month and year on which it is filed or delivered, and shall commence as follows :

Declaration after Summons.

[*Venue*]. *A. B.*, by *E. F.* his attorney, [or in his own proper person,] complains of *C. D.*, who has been summoned to answer the said *A. B.*, &c.

Declaration after arrest, where the party is not in custody.

[*Venue*]. *A. B.*, by *E. F.* his attorney, [or in his own proper person,] complains of *C. D.*, who has been arrested at the suit of the said *A. B.*, &c.

Declaration, where the party is in custody.

[*Venue*]. *A. B.*, by *E. F.* his attorney, [or in his own proper person,] complains of *C. D.* being detained at the suit of *A. B.*, in the custody of the Sheriff [or the Marshal of the Marshalsea of the Court of King's Bench, or the Warden of the Fleet.]

Declaration after the arrest of one or more defendant or defendants, and where one or more other defendant or defendants shall have been served only, and not arrested.

[*Venue*]. *A. B.*, by *E. F.* his attorney, [or in his own proper person,] complains of *C. D.*, who has been arrested at the suit of the said *A. B.*, [or being detained at the suit of the said *A. B.*, &c. as before], and of *G. H.*, who has been served with a writ of capias, to answer the said *A. B.*, &c.

And that the entry of pledges to prosecute at the conclusion of the declaration, shall in future be discontinued.

It is ORDERED, that the Writ of Capias and Distringas, which shall hereafter be issued out of the Superior Courts of Law at Westminster into the counties palatine of Lancaster or Durham, shall be directed to the Chancellor of the county palatine of Lancaster, or his deputy there, or to the Bishop of Durham, or his Chancellor there, and shall be in the following form :

Writ of Distringas.

William the Fourth, &c. To the Chancellor of our county palatine of Lancaster, or his deputy there, [or, To the Reverend Father in God, by Divine Providence Lord Bishop of Durham, or to his Chancellor there], greeting: We command you, that by our Writ, under the seal of our said county palatine, to be duly made and directed to the Sheriff of our said county palatine, You command the said Sheriff [or, if in Durham, that by our Writ, under the seal of your Bishoprick, to be duly made and directed to the Sheriff of the County of Durham, you cause the said Sheriff to be commanded] that he omit not by reason of any liberty in his bailiwick, but that he enter the same and distrain upon the goods and chattels of *C. D.*, for the sum of forty shillings, in order to compel his appearance in our Court of , to answer *A. B.* in a Plea of Trespass on the Case [or debt, or as the case may be]; and how he shall execute that our writ be made known to us in our said Court, on the day of now next ensuing. Witness , at Westminster, the day of , in the year of our reign.

Notice to be subscribed to the foregoing Writ.

In the Court of
Between *A. B.*, plaintiff,
and
C. D., defendant.

Mr. *C. D.*,

Take notice, that I have this day distrained on your goods and chattels in the sum of forty shillings, in consequence of your not having appeared in the said Court, to answer to the said *A. B.*, according to the exigency of a Writ of Summons, bearing teste on the day of , and that in de-

fault of your appearance to the present Writ within eight days inclusive after the return hereof, the said *A. B.* will cause an appearance to be entered for you, and proceed thereon to judgment and execution, or (*if the defendant be subject to outlawry*) will cause proceedings to be taken to outlaw you.

Writ of Capias.

William the Fourth, &c.

To the Chancellor of our county palatine of Lancaster, or his Deputy there, or,

To the Reverend Father in God, by Divine Providence Lord Bishop of Durham, or to his Chancellor there, greeting: We command you, that by our Writ, under the seal of our said county palatine, to be duly made and directed to the Sheriff of our said county palatine, you command the said Sheriff [*or, if in Durham, that by our Writ, under the seal of your Bishoprick, to be duly made and directed to the Sheriff of the County of Durham, you cause the said Sheriff to be commanded*] that he omit not by reason of any liberty in his bailiwick, but that he enter the same and take *C. D.*, of _____, if he shall be found in his bailiwick, and him safely keep until he shall have given him bail, or make deposit with him according to law in an action on promise [*or of debt, &c.*] at the suit of *A. B.*, or until the said *C. D.* shall, by other lawful means, be discharged from his custody. And that he further command him, that in execution thereof, he do deliver a copy thereof to the said *C. D.*: and that the said writ do require the said *C. D.* to take notice, that within eight days after execution thereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in our Court of _____ to the said action; and that in default of his so doing, such proceedings may be had and taken as are mentioned in the warning thereunder written or indorsed thereon; and that he further command the said Sheriff, that immediately after the execution thereof, he do return that Writ to our said Court, together with the manner in which he shall have executed the same, and the day of the execution thereof; or that if the same shall remain unexecuted then, that he do so return the same at the expiration of four calendar months from the date

thereof, or sooner, if he shall be thereto required by order of the said Court, or by any Judge thereof. Witness _____ at Westminster, the _____ day of _____

Memorandum to be subscribed to the Writ.

N. B.—This Writ is to be executed within four calendar months from the date hereof, including the day of such date, and not afterwards.

A Warning to the Defendant.

- 1.—If a defendant, being in custody, shall be detained on this Writ, or if a defendant, being arrested thereon, shall go to prison for want of bail, the plaintiff may declare against such defendant before the end of the Term next after such retainer or arrest, and proceed thereon to judgment and execution.
- 2.—If a defendant, being arrested on this Writ, shall have made a deposit of money, according the Statute of 7 and 8 George 4, Chap. 71, and shall omit to enter a common appearance to the action, the plaintiff will be at liberty to enter a common appearance for the defendant, and proceed thereon to judgment and execution.
- 3.—If a defendant, having given bail on the arrest, shall omit to put in special bail as required, the plaintiff may proceed against the sheriff, or on the bail bond.
- 4.—If a defendant having been served only with this Writ, and not arrested thereon, shall not enter a common appearance within eight days after such service, the plaintiff may enter a common appearance for such defendant, and proceed thereon to judgment and execution.

Indorsements to be made on the Writ of Capias.

Bail for £ _____ by affidavit,

or,

Bail for £ _____, by order [*naming the Judge making the order*], dated the _____ day of _____

This Writ was issued by *E. F.*, of _____, attorney for the plaintiff [*or plaintiffs*] within named.

or,

This Writ was issued in person by the plaintiff within named [*mention the city or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such there be*].

The Legal Observer.

VOL. V.

SATURDAY, NOVEMBER 10, 1832. No. CVIII.

——— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”
HORAT.

JUDICIAL CHARACTERS.

No. VII.

A MEMOIR OF LORD TENTERDEN.

It has not yet been our duty to record the death of a Judge so eminent as the late Chief Justice of the King's Bench. We shall first mention the particulars that have come to our knowledge respecting him, and then endeavour to give some estimate of his qualifications for this important office, which he held for so many years.

The history of his life, like that of most lawyers, is soon told. He was born on the 7th of October, 1762, we believe, at Canterbury. His parents were of very humble origin, and his father pursued the trade of a barber in that town. Lord Tenterden thus adds another to the long list of eminent Judges who have risen from the lowest rank of society—a circumstance, as we think, much more to be recorded to his honour than a title to the proudest escutcheon. He never displayed any false shame on this subject himself, or unwillingness to remember his own parentage; and we have been told that very recently, being at Canterbury with his eldest son (now Lord Tenterden), he visited the former insignificant dwelling of his father,—a small house near the Cathedral gate-way,—in company with his son, to whom he shewed it with evident satisfaction. His early ability and quickness induced his father to make every exertion to give him a suitable education, and he was sent to the Gram-

mar-School at Canterbury, where he received his early education, and where it is a curious fact that his future clerk was his school-fellow. After remaining here for the usual period, he was sent by the foundation to Corpus Christi College, Oxford, where his talents and learning soon manifested themselves. In 1784 he obtained the Chancellor's prize for his verses entitled “Globus Aerostaticus,” and in 1786, for an essay on “The Use and Abuse of Satire.” And he was soon after appointed a Fellow and Tutor of that college. He remained at the university rather longer than usual, but was at last induced to turn his attention to the study of the law, and entered accordingly at the Inner Temple.

Once entered, he undertook the study of his profession with the most steady and industrious perseverance, and thus acquired those vast stores of legal learning and information which he afterwards displayed, both at the Bar and on the Bench. On being called to the Bar he joined the Oxford circuit, where he is still well remembered. He very soon became extensively employed as a junior counsel, and was as much sought for as such as any great leader of the day was as senior counsel, his judgment, learning, and reputation, being eminently serviceable in this capacity, notwithstanding his powers of oratory, although respectable, were hardly sufficient to command very great attention in addressing a jury. His opinions were also much sought after; and altogether, his practice was probably as considerable as that of any man of his day, and his income proportionably large, aver-

aging, as we have heard, about 10,000*l.* a year. He had early acquired the friendship and good services of Mr Justice Buller, and he subsequently obtained the still more valuable favour of Lord Ellenborough. He was taken up as junior by Government in most of the public prosecutions which occurred in his day, but never obtained a silk gown, he having, we believe, declined that distinction.

His fitness for the Bench, from his learning and discrimination, had been soon remarked; and in Michaelmas Term, 1816, he was created a Puisne Judge of the Court of Common Pleas, in the place of Mr. Justice Heath, but was in the following Easter Term removed to the Court of King's Bench, taking the seat vacated by Mr. Justice Le Blanc. His appointment fully justified the opinion entertained of his fitness for his office; and on the death of Lord Ellenborough, Chief Justice of the King's Bench, he was considered to be the best successor that could be found to that eminent Judge. In this situation he remained until his death, on the 4th of the present month, in the seventy-second year of his age. He had been for a considerable period in a declining state of health; but his sense of duty, and his inclination for his judicial labours, induced him to continue in his situation. Very considerable symptoms of decay might however latterly be observed. He died, as perhaps he would have wished, in the discharge of his duties, having undertaken the principal situation in the late commission at Bristol. The fatigue of this unquestionably hastened his death. He was observed to be ill at the close of the first day; on the second his illness increased, and he was soon afterwards conveyed to London. How present the scene he had just left was to his mind in his last illness, is shewn by a singular anecdote respecting his death, which we have heard from unquestionable authority, and affords a new instance of "the ruling passion strong in death." He had been sinking the whole of the night before he died, but had generally retained his faculties. Towards morning he became restless and slightly delirious; all at once he sat up in his bed, and with a motion of his hand as if dipping a pen in the inkstand, as he had been accustomed to do on the Bench, said distinctly, "Gentlemen of the Jury, you are discharged." He then fell back on his bed, and almost immediately expired.

In April, 1827, Lord Tenterden was cre-

ated a Peer of the Realm, by the title of Baron Tenterden of Hendon in the county of Middlesex; having once or twice before refused the honour, for which we have heard various reasons given. He was distinguished as an author, having in the year 1802 published "A Treatise on the Law relative to Merchant-ships and Seamen," which is the standard work on the subject, and is well worthy of its author. It has reached five editions, the last of which was edited by his eldest son, in 1827.

Lord Tenterden was married, in June, 1795, to the daughter of Mr. Lamott, a gentleman residing at Basilden in Berkshire, by whom he has left two sons, John Henry, the present Lord Tenterden and his late marshal and associate, and Charles a lieutenant of dragoons, and also two daughters.

As a Judge, he possessed many very conspicuous qualities. He was almost equally distinguished in *Banc* and at *Nisi Prius*. In *Banc* his vast stores of information enabled him almost without effort to deal with every case which came before him. His knowledge of the laws of property was very considerable; his only heresy being that relating to the presumed surrender of terms, which however he recanted before his death. On cases relating to Pleading and Poor Laws, he was generally a complete master of the subject; but in those connected with the great rules of the Common Law, he had no equal; expounding and illustrating the principles of the subject discussed with a learning, clearness, and discrimination never surpassed.

At *nisi prius* he seized at once on the real difficulties of the case, struck off all collateral issues and extraneous matter, and presented the point in dispute in a concise and intelligible form to the jury for their decision. He met and decided, without difficulty, any point which arose at the trial; and his knowledge, and his manner withal, prevented, in general, all attempts to raise useless or idle quibbles. He stopped at once all unnecessary dispute, and in doing so his manner was occasionally harsh; but it was only in this way that he was enabled to dispose of the business of his Court, with such satisfaction to the profession and the country. Neither can it be said that he was unkind or uncourteous; on the contrary, he very rarely lost his temper, and never his sense of the propriety and dignity of his office. Few Judges have decided so much and so well; his rulings have rarely been disturbed; and what he has himself

said of Lord Ellenborough, may with as great justice be repeated of himself, "that the wonder is, not that he was sometimes wrong, but that he was so often right."

With his character as a politician we have nothing to do. He was a Tory by education and feeling. It has been said, he could not entirely divest himself of all party spirit, where the interests of the Crown were in question. His leaning was unquestionably in favor of those in authority; but his decisions have never had any shade of violence or intemperance.

As a legislator, he was not entirely undistinguished. He was never in the House of Commons, neither was he an active law reformer; but since he has been in the House of Lords, he has introduced several useful and important bills, which have become the law of the land; most of which have been drawn up in pursuance of the recommendation of the Common Law Commissioners. The chief of them are the 9 G. 4. c. 14, for the alteration of the Law, as to the Limitation of Actions; the 9 G. 4. c. 15, to prevent a failure of justice by reason of Variances between Records and Writings produced in evidence thereof; the 1 W. 4. c. 3, the Act for the Amendment of Sir J. Scarlett's Act; the 1 W. 4. c. 21, the *Mandamus* and Prohibition Act; the 1 W. 4. c. 22, the Interrogatories Act; the 1 & 2 W. 4. c. 58, the Interpleader Act; the 2 & 3 W. 4. c. 39, the Uniformity of Process Act; and the Prescription Acts, the 2 & 3 W. 4. cc. 71 & 100; and some other less important acts.

NOTES ON THE NEW RULES OF MICHAELMAS TERM.

In our last Number we were enabled, by considerable effort, to present our readers with a complete copy of the New Rules formed by the Judges for the purpose of carrying into effect the provisions of the Uniformity of Process Act, 2 & 3 W. 4. c. 39. Our pages contained the first copy of those Rules presented to the public in a printed form. It will be remembered, they were made under the authority of § 14 of the above cited Act. The words of that section are—

"And be it further enacted, that it shall and may be lawful to and for the Judges of the said Courts, and they are required from time to time, to make all such General Rules and Orders for the effectual execution of this Act, and of the intention and object

hereof, and for fixing the Costs to be allowed for and in respect of the matters herein contained and the performance thereof, as in their judgment shall be deemed necessary or proper, and for that purpose to meet as soon as conveniently may be after the passing hereof."

Various other rules will be necessary for the complete enforcement of the Act, and the Judges will of course have power under the recited section to make new ones, or to amend those already formed.

The language of the first rule is,

"That every Writ of Summons, Capias, and Detainer, shall contain the names of all the defendants, if more than one, in the action, and shall not contain the name or names of any defendant or defendants in more actions than one."

From this it will appear that the process under the new Act, as to containing the names of defendants in different causes of action, is placed on the same footing as the process previously in use.

The next rule contains directions as to the amount of fees to be charged on the various descriptions of process introduced by this Act.

The next Rule is in these terms:

"That the person serving a Writ of Summons shall, within three days at least after such service, indorse on such Writ the day of the week and month of such service, otherwise the plaintiff shall not be at liberty to enter an appearance for the defendant according to the Statute; and every Affidavit upon which such an appearance shall be entered shall mention the day on which such indorsement was made."

This rule is in furtherance of § 1 of the Act. That section provided that "the person serving the summons shall and is hereby required to indorse on the Writ the day of the month and week of the service thereof;" but did not direct within what period the indorsement was to be made. This rule, it will be seen, may very easily be evaded, if those who make the affidavit previous to entering an appearance for the defendant, are not scrupulous as to misstatement. It would be almost impossible to obtain a conviction for perjury assigned on such a mis-statement. No provision is made in the Act, or in this Rule, as to the form of the affidavit to be made in order to entitle a plaintiff to enter the appearance contemplated by § 2. That will of course form the subject of some future rule.

The next rule provides—

"That the Sheriff or other officer or person to whom any Writ of *Capias* shall be di-

rected, or who shall have the execution and return thereof, shall within six days at the least after the execution thereof, whether by service or arrest, indorse on such Writ the true day of the execution thereof; and in default thereof, shall be liable in a summary way to make such compensation for any damage which may result from his neglect, as the Court or a Judge shall direct."

This rule is for the purpose of carrying into effect part of the provisions of § 4. That section directed the above indorsement to be made, but was silent as to the time within which it was to be made. The summary mode of enforcing compensation, here mentioned, is perfectly new. As writs issued under the authority of this Act may be in force for four months, according to § 10, it will be important for plaintiffs to keep in view the provisions of § 15, which empower the Courts to make Rules and Orders for the return of writs, either in term or vacation.

The following Rule recognizes and renders applicable to all writs and copies of them issued under the authority of this Act, Rule 2 of Hilary Term, 1832. That Rule, it will be remembered, directs that the amount of debt and costs demanded by plaintiffs shall be endorsed upon the back of all process. That Rule has been holden by Mr. J. Taunton, in the case of *Ryley v. Boissomas*, in last Easter Term, to be compulsory, and not merely directory. From analogy to this decision, it is conceived that all the Rules, on which we are now observing, will be considered as compulsory, and not merely directory, where they require any indorsement to be made on process.

In the case of *Lewellin v. Norton*,^a it was decided, that a bill against an attorney was not "process" within the meaning of the Rule of H. T. 2. W. 4; and therefore, that such an indorsement as was provided by that Rule, need not be placed on a bill issued against an attorney. As, however, the first section of the new Act makes the Summons the mode of commencing personal actions against all persons, whether "entitled to the privilege of the Court wherein such action shall be brought, or of any other Court;" and as this new Rule extends the above cited Rule of H. T. to all writs and copies of writs issued under the authority of this Act, such indorsements must now be made on all proceedings against attorneys as well as other persons.

The next Rule is in these terms —

"That any *Alias* or *Pluries* Writ of Summons, if the plaintiff shall think it desirable, be issued into another county, and any *Alias* or *Pluries* Writ of *Capias* may be directed to the sheriff of any other county; the plaintiff in such case upon the *Alias* or *Pluries* Writ of Summons describing the defendant as late of the place of which he was described in the first Writ of Summons, and upon the *Alias* or *Pluries* Writ of *Capias* referring to the preceding Writ or Writs, as directed to the Sheriff to whom they were in fact directed."

Power to continue writs by *alias* and *pluries*, is given by sect. 10. Here it is right to observe, that a question of some difficulty has arisen in the minds of various practitioners, and of the officers of the Courts, as to the mode of continuing Writs issued before the present Act came into operation. This Act having been passed to provide for the commencement, and not the continuation of actions, and not coming into operation until the first day of the present term, it was conceived that those writs which were issued before the first day of the present term, could not be continued by writs issued under the authority of this Act. An application having been made to the Judges of the Court of King's Bench, to request that they would order their officers to issue writs according to the old practice for the continuation of writs issued before the first day of the present term, the Court directed that an order to that effect should be made. It also expressed an opinion, that the new process would not be a good continuation of writs issued previous to this Act coming into operation. With respect to continuing Writs issued under the authority of this Act for the purpose of saving the Statute of Limitations, it will be important always to keep in view the directions contained in the proviso of § 10. The words are, "provided always that no first Writ shall be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, unless the defendant shall be arrested thereon or served therewith, or proceedings to or towards outlawry shall be had thereupon, or unless such Writ, and every Writ, if any, issued in continuation of a preceding Writ, shall be returned *non est inventus*, and entered of record within one calendar month next after the expiration thereof, including the day of such expiration, and unless every Writ issued in continuation of a preceding Writ shall be issued within one such calendar month after the expiration of the preceding Writ, and

^a J Dowl. Prac. Rep. 416.

shall contain a memorandum indorsed thereon or subscribed thereto, specifying the day of the date of the first Writ; and return to be made in bailable process by the sheriff or other officer to whom the Writs shall be directed, or his successor in office, and in process not bailable, by the plaintiff or his attorney suing out the same, as the case may be." ^b Keeping in mind the decision of the King's Bench above mentioned, it would appear that where actions have been commenced for the purpose of saving the Statute of Limitations, they cannot be continued by issuing Writs under the present Act. If that be so, then it should seem that where the action has been commenced before this Act, for the purpose of saving the Statutes of Limitations, the provisions of it need not be complied with as to the issuing and return of the continuing Writs: for the provisions of the above cited section only apply to the newly provided Writs.

The following rule contains the forms of *Alias* and *Pluries* Summons and *Capias*.

The next is in these terms:

"That in every writ of *distringas* issued under the authority of the said act, a *non omittas* clause may be introduced by the plaintiff, without the payment of any additional fee on that account."

According to the former practice, an additional fee was required on introducing a *non omittas* clause into a writ.

As this Rule refers to the process of *Distringas*, this may perhaps be the most proper place to introduce some observations on the construction of the Act, with reference to the time at which that writ is to be issued.

By the third section it is provided,

"That in case it shall be made appear by affidavit, to the satisfaction of the Court out of which the process issued, or, in vacation, of any Judge of either of the said Courts, that any defendant has not been personally served with any such writ of summons as hereinbefore mentioned, and has not, according to the exigency thereof, appeared to the action, and cannot be compelled so to do without some more efficacious process: then, and in any such case, it shall be lawful for such Court or Judge to order a writ of *Distringas* to be issued, directed to the sheriff of the county wherein the dwelling-house or place of abode of such defendant shall be situate, or to the sheriff of any other county, or to any other officer, to be named by such Court or Judge, in order to compel the appearance of such defendant."

Such a power being given to the Court or a Judge, on the application of the plaintiff, it becomes important to consider how many

attempts to serve the Summons will be necessary previous to obtaining the *Distringas*, and how soon after those attempts that writ will be issued. The rules already made by the Judges on this Act are silent as to this question. We must therefore have recourse to the provisions of the Act itself, in order to determine it. By § 10 it is enacted, "that no writ issued by authority of this act shall be in force for more than four calendar months from the day of the date thereof, including the day of such date." Now, when a plaintiff has not been able to serve a defendant, and a defendant has not voluntarily appeared to the writ, is the plaintiff to wait until the expiration of four calendar months before he can obtain his writ of *Distringas*? or can he, at the expiration of eight days, make application for such a writ? Sec. 3 does not state at what time the application is to be made. By the form of summons in the Schedule to the Act, notice is given to the defendant, that if he does not appear in eight days after service of the writ, the plaintiff may enter an appearance for him. It might appear from this, and from the language of sec. 3, "according to the exigency thereof," as the exigency of the writ commences the moment it is issued, that the plaintiff having made attempts satisfactory to the minds of the Court or Judge, he should be at liberty to issue his *Distringas*, without waiting until the expiration of four months.

But although a plaintiff might be at liberty to enter an appearance for a defendant who had been summoned, and who therefore had received notice of the plaintiff's demand against him, he would not therefore be at liberty to issue a *Distringas*, previous to which the defendant had, in fact, received no notice. On examining the language of the act still further, the necessary conclusion seems to be, that the plaintiff must in all such cases wait until the expiration of the four months. Although the exigency of a writ commences as soon as it is issued, yet its exigency continues so long as it is in force; and as it is in force for four months, its exigency must continue during that period. But it is only where the defendant has not appeared to the action according to the exigency of the writ, that the *Distringas* can be obtained. Therefore, inasmuch as it cannot be known whether a defendant will appear, according to the exigency of the writ, until that exigency has expired, and it does not expire until the end of four months, the plaintiff cannot obtain his *distringas* until the end of that pe-

^b See 3 Dowl. Stat. 151, n. h.

riod. That the exigency of the writ must be considered as continuing for four months is clear, from its being in the power of the plaintiff to serve it during that period.

One effect produced by the introduction of this new process by *Distringas*, will be to enable plaintiffs to compel an appearance by clergymen, who have no lay property. Before this Act, where a clergyman had no lay property, a *Distringas* could not be issued effectively against him to compel an *appearance*, and therefore the plaintiff might, in such cases, be deprived of his remedy, since sequestration only follows *judgment*. But now, as the writ of *Distringas* may be "directed to the sheriff of the county wherein the dwelling-house or place of abode of such defendant shall be situate, or to the sheriff of any other county," &c. the appearance of an ecclesiastical person can be enforced; and in case of the return of *non est inventus* and *nulla bona*, judgment may be obtained against him. It will then be perfectly easy for the plaintiff to issue sequestration.

The next Rule provides —

"That when the attorney actually suing out any writ, shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ."

The indorsement provided by the form of Summons, *Capias* and Detainer only, required the indorsement of the name of the attorney actually suing out the writ. This Rule, it will be seen, does not apply to cases where the plaintiff's attorney appears for the defendant, according to the statute.

The following Rule is in these terms:

"That if the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof, any of the matters required by the said act to be by him inserted therein or indorsed thereon, such writ or copy thereof shall not, on that account, be held void, but may be set aside as irregular, upon application to be made to the Court out of which the same shall issue, or to any Judge.

This Rule was necessary to protect persons acting under Writs, which might afterwards turn out to be informal.

The next Rule contains certain provisions as to declaring. The terms of it are as follows:

"That upon all Writs of *Capias*, where the defendant shall not be in actual custody, the plaintiff, at the expiration of eight days after the execution of the Writ, inclusive of the day of such execution, shall be at liberty to declare *de bene esse*, in case special bail shall not have been perfected. And if there be several defen-

dants, and one or more of them shall have been served only, and not arrested, and the defendant or defendants so served shall not have entered a common appearance, the plaintiff shall be at liberty to enter a common appearance for him or them, and declare against him or them in chief, and *de bene esse* against the defendant or defendants who shall have been arrested, and shall not have perfected special bail."

This Rule is for the enforcement of the provision contained in § 4 of the Statute, which enacts, that where a plaintiff issues a *Capias* against several defendants, he or his attorney may "order the sheriff or other officer to whom such writ shall be directed, to arrest one or more only of the defendants therein named, and to serve a copy thereof on one or more of the others, which order shall be duly obeyed by such sheriff or other officer or person; and such service shall be of the same force and effect as the service of the Writ of Summons hereinbefore mentioned, and no other."

Previous to the passing of this Act, where process issued against two defendants, and one of them absconded, or kept out of the way, the plaintiff was obliged to proceed to outlawry against him before he could go on against the other. Now it would appear, that in such a case a plaintiff might, by having recourse to the provisions of § 3, by *Distringas*, obtain judgment against both, without being driven to the expensive and dilatory process of outlawry.

The next Rule is in these words:

"That in case the time for pleading to any declaration, or for answering any pleadings, shall not have expired before the 10th day of August in any year, the party called upon to plead, reply, &c. shall have the same number of days for that purpose after the 24th day of October, as if the declaration or preceding pleading had been declared or filed on the 24th day of October; but in such cases it shall not be necessary to have a second rule to plead, reply, &c."

This rule was rendered necessary by the last proviso contained in § 11 of the Act, which directed that "no declaration, or pleading after declaration, shall be delivered between the 10th day of August, and the 24th day of October."

The following Rule is in these terms:

"That in case a Judge shall have made an order in the vacation, for the return of any Writ issued by authority of the said Act, or any Writ of *Ca. Su.*, *Fi. Fa.*, or *Elegit*, on any day in the vacation, and such order shall have been duly served, but obedience shall not have been paid thereto, and the same shall have been made a Rule of Court in the term then

next following, it shall not be necessary to serve such Rule of Court, or to make any fresh demand of performance thereon; but an attachment shall issue forthwith for disobedience of such order, whether the thing required by such order shall or shall not have been done in the mean time."

This Rule is in furtherance of § 15 of the Act, which empowers Judges to make orders for the return of Writs in vacation, with the same force and effect as Rules of Court, although no attachment can issue for disobedience thereto, until they shall be made Rules of Court.

The following is the next Rule:

"That if any attorney shall be required by the said act to declare that any Writ of Summons, or Writ of *Capias*, upon which his name is indorsed, was not issued by him, or with his authority or privity, all proceedings upon the same shall be stayed until further order."

By § 17, under the authority of which this rule is framed, power was given only to discharge defendants who were arrested under the circumstances described in this Rule, on filing common bail. It did not give power to stay proceedings, nor did it apply to serviceable process. The section, however, applied to "any Writ issued by authority of this Act." It would therefore apply to Writs of Detainer, as well as other Writs; but the Rule, it will be seen, does not apply to such Writs. Yet it may frequently be of great importance to a prisoner to be able to stay proceedings, under the circumstances stated in the Rule. The Court, however, it is conceived, might exercise such a discretion, if it should think right, although no provision has been made to that effect by the Rule.

The following Rule provides for the mode of entitling declarations of the day of the month and year, instead of the term of which they were filed or delivered, and gives forms.

Provisions are also made for the forms of *Capias* and *Distringas* to be issued into the counties palatine of *Lancaster* and *Durham*. No forms to be used in such case are contained in the Act.

THE NEW CHIEF JUSTICE.

ALL doubt as to the successor of Lord Tenterden has been speedily removed. Sir Thomas Denman, the late Attorney-General, was appointed as soon as it was possible for him to receive the notification, kissed

hands on Tuesday, was coifed and sworn in on Wednesday, sat for the first time on Thursday, and is now Lord Chief Justice of England. Our feelings are certainly not unmixed at this appointment. Sir Thomas Denman has had few private enemies; he has been always known as a man of extraordinary honor, uprightness, and political consistency; he has adhered to his party and principles through good and evil report; he has resisted temptations which have been too strong for most; he deserves, therefore, of his political friends, all that they can give; and it is alike honorable to him and to them, that there was not one moment's unnecessary delay in placing him where he is. At the same time, however, that we say this, we cannot but add, that the appointment, while it has been admitted as almost necessary, and therefore submitted to, has not been approved by the large body of the profession, best qualified to judge of its fitness. The present Chief Justice has been considered less eminent as a lawyer, than as a politician; he was not much employed before he was created Attorney-General, and since he has filled that office he has not been successful in his undertakings. It is but fair, however, to recollect, that his reputation as Common Serjeant was considerable; that he has always had a character for talents of no ordinary kind; that his want of success as an advocate has been attributed to his candour and love of fairness—qualities which will add to, rather than lessen, his reputation on the bench. Let us moreover hear before we condemn, and give a man whom all must respect and admire, on some accounts as a Judge, full opportunity of acquiring respect and admiration for all the qualities which should be conspicuous in the Chief Justice of England.

MR. BENTHAM'S OBJECTIONS TO A PLURALITY OF JUDGES.

THE last Bill of the Lord Chancellor "for the Improvement of the Administration of Justice in the High Court of Chancery in England,"* having, for two of its objects, the establishment of an Equity Court of *Appeal*, to consist of four Judges, and a *Masters' Court*, to consist of four Masters, we deem it important to put our readers in possession of the late Mr. Bentham's Ob-

* See an Analysis, Vol. 4. p. 343; and see also p. 369.

jections to a *Plurality* of Judges. We extract these objections from a pamphlet published by the venerable juriconsult not long before his death, to which he gives the title of "*Boa Constrictor, alias Helluo-Curiarum.*"

He first quotes part of the Lord Chancellor's speech, in which his Lordship contended, that there were two or three branches of Judicature in which the presence of three Judges was infinitely better than that of one :

1. "First, where conflicting *facts* are to be discussed or conflicting *evidences* to be heard ; a *Jury* is perhaps the *best forum* for such a case ; a *single Judge* perhaps the worst : but *three men*, with minds *variously constituted*, are much more likely to come to a *satisfactory conclusion* than a *single individual*.

2. "The next is—where *anything like discretion* is to be exercised, either in awarding *damages* or saying what *costs* are to be paid, which is often a very important and not unfrequently difficult and delicate inquiry, as too many cases are brought and kept up merely for the sake of the costs. The duty of the Judge then is somewhat like that of assessing damages ; and in the exercise of such discretion it is better to have three Judges than one.

3. "Last of all, where there are great and difficult and important points of *law* and equity to be settled, it is much more satisfactory to *suitors* and to the *profession* which cultivates the sciences, to have that law considered and settled by more Judges than one."

In opposition to this, Mr. Bentham assigned numerous reasons, which he classed under no less than twenty-two heads ; and we give them in his own way,—although it will be observed, that many of them might be brought under a single sub-division. From one to twelve, he treats of the "*moral aptitude*" of a Judge.

1. "As in the case of any other functionary, so in that of a Judge. The state of the *law* being given,—for every practical purpose, appropriate *moral aptitude* must be considered as exactly proportioned to the strictness of his dependance upon *public opinion* :

2. "Singly-seated, a Judge finds not any person, on whom he can shift off the whole, or any part, of the imputation, of a mischievous exercise given to any of his functions. Not so, when he has a colleague.

3. "No person does he find to share with him in the weight of that odium.

4. "No persons does he find in the same situation with himself, engaged by the conjuncties of self-regarding interest and sympathy, to support him under the apprehension of it, by the encouragement given by their countenance.

5. "He has it not in his power, without committing himself, to give to an indefensible

exercise made of his functions, *half* the effect of a *vote*,—namely, by purposed *absentation* and non-participation.

6. "He finds not, in the same situation with himself, any person to share with him, and in proportion draw off from him, the whole, or any part, of any lot of *approbation*, whether on the part of his superior officer, or the public at large, that may come to be attached to *extra merit*, in any shape, manifested, on the occasion of any exercise given to his functions.

7. "His reputation stands altogether upon the ground of his actions. He finds not in the same situation, any person to help him, as numbers help one another, to raise a *schism* in the public,—and, by the mere force of prejudice—without *evidence*, or in spite of evidence, in relation to specific actions,—to draw after them the suffrages of the unreflecting part of it.

8. "Of the quality correspondent and opposite to appropriate moral aptitude, the most mischievous effect is—disposition to exercise arbitrary power. But that which constitutes *arbitrary power* in judicature is—not the *unity* of the Judge, but his exemption from the controul of a superior,—from the obligation of assigning reasons for his acts,—and from the superintending scrutiny of the public eye.

9. "The reproach of arbitrary power belongs, on all the above accounts, to the authority of many Judges, especially large bodies of Judges, in contradistinction to that of *one*.

10. "The circumstances, which render plurality indispensable in sovereign legislature, do not apply to judicature.

11. "So many *sents*, so many sets are there, of persons, who, by community of sinister interest, stand engaged to secure the possessor of the situation against responsibility in every shape, for delinquence in every shape."

He then proceeds to what he describes as "*intellectual and active aptitude.*"

12. "In a singly-seated Judge, most *intelligence* is likely to be found, in so far as intelligence is the fruit of exertion.

13. "A Judge, by being single, exerts himself the more from his seeing no resource but in his own powers.

14. "Hence, only in the case of a singly-seated functionary can *promptitude*, or say *despatch*, be maximized.

15. "A singly-seated functionary has but one opinion, and one set of *reasons*, to give.

16. "No person's opinion has he to *wait* for.

17. "No person has he to *debate* with, to *gain over*, or to *quarrel* with.

18. "No person has he to put unnecessary *questions* to him,—to propose unnecessary *steps*,—or to necessitate useless *adjournments*.

19. "All the advantages that can be expected from a multiplicity of Judges, may be insured, in a much greater degree, by a numerous *auditory*, with the addition of the whole world for *readers*, as to everything in the conduct of a Judge, that any men think worth their notice ; and any advantage that

can ever have happened by accident from such multiplicity can be imputed to nothing but the chance it affords for publicity.

20. "The advantages obtainable from a plurality of heads, independently of exertion, are needed in no more than a small number of cases; and, in proportion as they are needed, may be had by the help of *Advocates* and Courts of *Appeal*, without putting Judges more than one into the same court.

21. "To suitors—that is to say, to persons having business at the office,—causes of delay are, in a large proportion of the number of individual cases, to a greater or lesser amount, causes of *expence*.

22. "If these principles be just, the saving they will produce in the *expence* of the establishment is prodigious. In the expence attending the collection of *tares*—in the terms of *loans*—in the adjustment of most other plans of economy in finance, a saving of a few *units* per cent. is thought a great matter; here it runs to *hundreds* per cent., and the least saving is a hundred."

In another part of the pamphlet, which treats of the Bankruptcy Court, Mr. Bentham enters still further into detail in favor of "single-seatedness," in opposition to *many-seatedness*; and on a future occasion we may revert to the subject, and notice the further reasons which he has there urged against the establishment of new Courts of four Judges each. The objection on the part of the suitor to an increase in the number of Judges, is, that the large expences which must be incurred in connexion with the new Courts, will furnish a pretext for continuing the exaction of heavy fees at each stage of a cause; and the improvement in paying specific salaries to the Judges and officers, instead of remunerating them by fees, affords no relief to the suitor, because the same fees are required to be paid to the Treasury for the purpose of discharging compensations and expences. We hope that, at the sitting of the next Parliament, a return will be immediately obtained of all the fees which are collected by the respective Courts and their officers. The practitioners who have to advance those fees are weighed down by them; and, unless in cases of considerable extent of practice, the allowances—now so materially reduced—do not compensate for the interest of the money and the outlay incident to the transaction of professional business.

land and Wales; and of the Act 2 & 3 W. 4. c. 64, to settle and describe the Divisions of Counties; and the Limits of Cities and Boroughs, in England and Wales; with a Summary of the Alterations effected by the above Acts in the Laws of Election, and Suggestions to Candidates, Electors, Returning Officers, Town Clerks, and Overseers. By Samuel Miller, Esq. London: Henry Butterworth.

THIS book which, we believe, is about the tenth on the same subject, has just reached us, though the preface bears a date some time back. The works which we have previously noticed were written by Barristers: this is by a Solicitor, who, from his introductory remarks, appears to have been engaged during the last seven years in combating some of the evils which the Reform Act is intended to remove. He therefore brings to the performance of his task a considerable share of practical knowledge.

The plan which Mr. Miller has adopted, and the advantages which he conceives will be found in his publication, are thus set forth:

"1st. All technical and superfluous terms are most carefully excluded throughout each analysis, so that the least learned reader cannot fail to comprehend the meaning of every section.

"2d. The several schedules, a reference to which is so likely to confuse persons unskilled in the construction of acts of parliament, are embodied in the sections referring to them, and can therefore be read as portions of the acts to which they relate.

"3d. An alphabetical arrangement is observed throughout the work, so that the eye may quickly fix upon any place respecting which information is sought.

"4th. For the convenience of candidates and electors, and of those officers who have duties to perform under the acts, the writer has made a summary of the several parts more particularly relating to each, and has shewn the alterations effected by the acts in their respective rights and duties."

The book contains the forms of notices for the guidance of the voters, and of the parties entrusted with the execution of the law. It commences with Analyses of the Reform and Boundary Acts. Then follows an outline of the provisions relating to candidates, electors, sheriffs and returning officers, overseers, and registration. There is also a classification of the provisions as to particular places, and a summary of dates within which acts of registration are to be done.

The summary of both acts, which is well

NOTICES OF NEW BOOKS.

Analysis of the Act 2 W. 4. c. 45, to amend the Representation of the People in Eng-

arranged and perspicuously written, will diminish the difficulties in interpreting the meaning of the acts.

Taylor's System of Stenography, or Short-Hand Writing. A new edition, with additional Notes, and new Tables; revised and improved, after considerable Practice, By John Henry Cooke. London, Crofts.

THIS is one of the best books we have seen on the subject of Short-Hand. The student, who, in addition to his attendance in Court, is now expected to follow a regular course of Law Lectures, will find it his interest to acquire some knowledge of this useful art; and the well-executed plates which accompany this little book, with the clear and full explanations which it contains, will soon enable him, by ordinary diligence, to make himself sufficiently master of the system to keep pace with the lecturer or speaker, in at least the main part of his address. Simplicity is of course the aim in all these systems: the following will afford a view of the merits of that which is adopted by Mr. Cooke:

"The character most easily and quickly written in this system, is that representing *c, s,* and *z,* being a horizontal line, thus —, and it is used in no less than 2800 or 2900 words. Again, the dot, (which can scarcely be called a character,) represents the vowels, used in about 3400 words. The character which takes the longest time, and requires the most care in forming with accuracy, is that formed from the circle; but the number of words in which it can be employed is the smallest, namely, about 1008. The following table will perhaps give at one view the powers of the stenographic alphabet according to this system:—

	Words.
1. Characters formed from <i>the line</i> are used in - - - - -	6170
2. Characters formed from <i>lines with loops</i> are used in - - - - -	3339
3. The dot, representing the vowels, is used in - - - - -	3300
4. Characters formed from <i>the circle</i> are used in - - - - -	1008

Total number of English words
in ordinary use - - - - - 13817

ON LOCAL COURTS.

To the Editor of the Legal Observer.

Sir,

On perusing the able remarks of your correspondent T. P.—M. in your Number of the 13th instant, and having had some experience

with respect to the *working system* of courts constituted similarly to that of the Wapentake of Salford, I will, with your permission, make one or two observations, in addition to those of your Correspondent on the subject. There are two extensive seignories (for a considerable distance adjoining, and in some places intersecting each other) near the centre of the West Riding of the populous county of York, *viz.* the Honour of Pontefract, and the Manor of Wakefield,—each of which has its Court Baron, with a jury of twelve good and lawful, &c., held regularly every three weeks, for the recovery of debts—originally of 1*l.* 19*s.* 11*d.*, but now increased by act of parliament to debts under 5*l.* Actions for assault, defamation, &c. are also frequently brought in these Courts. The process in both Courts is by plaint or summons, declaration, &c. as in the Hundred Court of Salford. Courts for the *trial* of causes are held, at the option of the respective Stewards, usually three or four times a year—the business of the regular court-days being merely the issuing of process, executing inquiries, &c., at which the Deputy Stewards usually preside.

On the trial days, the presiding Judge in the Court for the Honour of Pontefract, is its respected Steward, a Barrister; and that office in the manor of Wakefield is delegated by the Steward to a Barrister in the neighbourhood. Thus far the systems may be said to work well, and the equity of the decisions are rarely combated; but the advantages attending these local jurisdictions are greatly counterbalanced by the expenses of the proceedings therein, and the facility with which a defendant may elude their authority by removing out of their jurisdiction. In the majority of actions tried in these Courts, the costs generally amount from 8*l.* to 15*l.*, and in some cases to as much as 20*l.* Add to this the ease with which a fraudulent debtor may, and frequently does, escape with his property when final judgment is signed against him, and an execution about to be issued against his goods, from one jurisdiction to the other, or even out of both, and so elude the pursuit of justice. These considerations must necessarily influence many who can, perhaps, very badly afford it, to sacrifice their claims, rather than seek for redress at such hazard and expense; as in many cases the suitor might involve both himself and family in ruin, by compulsory proceedings for their recovery.

Would it not be much better, rather than such a system should be any longer tolerated, to give cognizance to the County Courts of all debts under 5*l.*, with power to hold courts at stated periods in populous local situations, and simplify the proceedings therein, so as to reduce the costs, according to the importance of the matter litigated, than suffer the costs of recovering a petty sum of 4*l.* to amount to quadruple the debt, as well as the probability of the defendant leaving the jurisdiction, and exulting at his nefarious conduct? It would, I should conceive, be no difficult matter to amend the practice of County Courts, in such a manner as to enable a plain-

tiff to recover a trifling debt at infinitely less expense, risk, and uncertainty, than by commencing his action in courts of local jurisdiction, such as those above mentioned, with power to the sheriff's deputy, or presiding Judge, in case the defendant should remove into another county, to direct the execution to the sheriff of that county, who should be obliged to execute the same, as if the proceedings had been taken in his own court.

Or, on the other hand, the jurisdiction of the Courts of Requests now in existence in the part of the country alluded to, might be satisfactorily increased to debts of 5*l.*; and courts of that description should be granted to those places not now included in the acts of parliament creating them. If the jurisdiction of the County Courts was generally improved, and the proceedings therein rendered less expensive, as I would take the liberty of suggesting, or that of the Courts of Requests extended, it would, in a great measure, obviate the complaints so generally urged against the expense of legal proceedings for the recovery of small debts, and enable a plaintiff to obtain his debt without risking a sum of several times its amount, and in many cases, as your correspondent observes, "prevent a poor family inflicting ruin, as well upon their neighbours as themselves."

I hope neither you, nor the readers of the Legal Observer, will deem me trespassing too much on its pages; but the importance of the subject to a very large district, in the midst of a dense population, engaged principally in commercial speculations, and where the grievance has been for a long time felt and complained of, induce me to submit these observations to you, in the hope that your notice of them may be the means of causing an inquiry into the matter, and ameliorating, if not entirely removing, a just cause of complaint.

I am, Sir, most respectfully yours,
Leeds, 18th Oct. 1832. W. P.

SUPERIOR COURTS.

King's Bench,

NEW PROCESS ACT.

The Uniformity Process Act (2 W. 4. c. 39) applies to the commencement of actions only, and not to the continuance of actions commenced before the Act came into operation.

S. Hughes applied to the Court to request they would make an order upon the officer at the Bill of Middlesex Office, directing him to sign a *pluries* bill of Middlesex.

In Easter term last, a bill of Middlesex had been issued against the defendant, which had been continued by *alias* and *pluries* to the first day of the present term. Another *pluries* bill of Middlesex having been tendered at the Bill of Middlesex Office for signature, the officer refused to do so, alledging that he had received directions from Mr. Justice *Patteson*

not to sign any writs but such as were issued under the new act.

Mr. Justice *Patteson* said, that he had merely sent him a copy of the new rules.

S. Hughes.—These writs were issued to prevent the operation of the Statute of Limitations. The 2 W. 4. c. 39, gave a new form of writ; but that act speaks of the commencement of actions only, and therefore a writ issued under the new act would not be a continuance of a bill of Middlesex, which was another species of writ. He therefore wished that the Court would direct the officer to sign the writ as required.

The Court, upon looking at the act, said, it appeared to them to be confined to the commencement of actions, and not to the continuance of them; and that the signer of the writs ought to have signed the bill of Middlesex as prayed; and gave the learned counsel an order accordingly.

Storr and another v. Bowles.—K. B. Before *Parke*, *Taunton*, and *Patteson*, Justices. Monday, Nov. 5th, 1832.

King's Bench—Practice Court.

AWARD.—RELEASE.—INTENTION.

Where the words of a release executed according to the directions of an award, would extend to a matter the parties did not intend the arbitrators to adjudicate upon, and on which they did not adjudicate, the generality of the words will be restrained by the intention of the parties.

Dundas shewed cause against a rule for setting aside a judgment signed and execution issued against the defendant, on a *cognovit* given by him to the plaintiff. The facts of the case were these: *George Upton*, the defendant in this case, entered into partnership, on the 21st May, 1827, with the plaintiff, *James Upton*, as an attorney. It was agreed, after some time, that the plaintiff should retire from the business, on condition of his receiving an annuity of 200*l.*, to be secured by the joint bond of the defendant and a Mr. *Blayden Thomson*, who was to enter into partnership with *George Upton*. A bond was accordingly executed. Disputes having afterwards arisen between the plaintiff and the defendant, on account of certain unsettled claims, in respect of the former partnership, and the nonpayment of the annuity pursuant to the agreement, two actions were commenced by the plaintiff; one for the alleged balance of account remaining unpaid since the dissolution of the partnership account, and the other for the arrears of the annuity. An agreement of reference was signed, in the cause relating to the balance of account, and a *cognovit* given in the action for the arrears of the annuity. Both the agreement and the *cognovit* were executed on the 15th June, 1831. The agreement to refer was in these terms: "Whereas disputes have arisen between the said *James Upton* and *George Upton*, touching and concerning the accounts between them, and alleged to be due from one to the other of them, and it hath been agreed

that the same shall be referred and submitted to the award and determination of Benjamin Scott and William Smith, of Tadcaster aforesaid, gentlemen: Now, therefore, these presents witness, that in pursuance of the said agreement, and for finally ending all questions and disputes, touching the same accounts, and all matters in dispute between the said James Upton and George Upton, it is hereby mutually agreed, by and between the said James Upton and George Upton, that the said accounts and all matters in dispute between them shall be and are hereby referred and submitted to the award and determination of the said Benjamin Scott and William Smith." The arbitrators proceeded, but they took no notice of the annuity, as a matter in difference, at any of the meetings; nor was it ever mentioned, except by the defendant's attorney, who complained of its terms. The arbitrators in pursuance of the reference, made their award, of which this was the principal clause: "And we do lastly award, order, adjudge, and determine, that upon the payment of the said sums of 89*l.* 10*s.* to the said James Upton as aforesaid, they, the said James Upton and George Upton shall and do respectively, at the costs and charges of the party requiring the same, sign, seal, and as their respective acts and deeds, deliver, each unto the other of them, mutual general releases, in writing, of all and all manner of action and actions, cause and causes of action, covenants, debts, specialties, controversies, clauses, and demands whatsoever, from the beginning of the world until the day of the date of the aforesaid agreement of reference." The sum directed having been paid, mutual releases in exact conformity with the direction of the award were executed. The annuity remaining in arrear, judgment on the *cognovit* was afterwards entered up, and execution issued against the goods of the defendant for the amount due. The present application has been made on the ground that, by the present terms of the agreement of reference, the claim for the annuity was referred also, and the mutual releases executed in conformity with the award barred the plaintiff from proceeding on the annuity bond and the *cognovit*. The question, therefore, will be, whether the plaintiff has released the annuity, or the arrears of it. The language of the release is undoubtedly very large, but it is restrained by the intention of the parties. They only intended to release what had been referred to the arbitrators, and the action for the balance of account only had alone been referred to them. Therefore, only claims arising out of that action were released. He cited 2 Roll's Abridg. 409 (A.); *Knight v. Cole*^a; *Abree's case*^b; *Henn v. Hanson*^c; *Payler v. Homershaw*^d; *Solly v. Forbes*^e; *Cole v. Gibson*^f;

^a 1 Show. 150; 3 Mod. 277, S. C.

^b Hetley, 15.

^c Siderf. 141.

^d 4 M. & S. 423.

^e 2 Brod. & Bing. 38.

^f 1 Vcs. 507.

Ramsden v. Hylton^g; *Thorpe v. Thorpe*^h. But the release was only of all causes of action until the day of the date of the aforesaid agreement of reference. The word "until" excluded the day so mentioned. The *cognovit* was given on the same day as the agreement of reference was signed, and therefore, it was excluded from the operation of the release. He cited *Nichols v. Ramsel*ⁱ; *Dixon v. Terry*^j; *Newmand v. Beaumont*^k; *Tuke v. Check*^l; *Trevil v. Ingram*^m; *Howle v. Kirkeby*ⁿ; 2 Bac. Ab. 404. (P.)

Wightman, *contra*, contended, that the cases cited were beside the question here to be decided. The reference here, is of "all" matters in difference between the parties. Under those general words, the disputes as to the annuity might have been taken into the consideration of the arbitrators. And if it *might*, there is abundance of authorities to shew that it *ought*: otherwise, the party is precluded from availing himself of it. In *Smith v. Johnson*^o, Lord *Eilenborough* observed, "Here is a reference of all matters in difference; and it appears, that the sum in respect of which the deduction is now claimed, was a matter in difference at the time, and within the scope of the reference; notwithstanding which, the defendant contends, that he was not obliged to bring forward the whole of his case before the arbitrators, but might keep back a part of it, in order afterwards to use it as a set-off. But it was competent to him to have brought the whole under the consideration of the arbitrators, and therefore, I think, that where all matters in difference are referred, the party as to every matter included within the subject of such a reference ought to come forward with the whole of his case." He also cited *Dunn v. Murray*; and *In the matter of Robson v. Railston*^p.

Taunton, J.—Those cases shew, that where there are matters in difference, all should be brought before the arbitrator, when the reference is general. But how does it appear that this annuity bond was a matter in difference, when it was so clear that the arrears on it were due, that the defendant gave a *cognovit* for them?

Wightman.—It must be considered as a matter in difference; since an action had been commenced on it for the arrears. Besides, the defendant's attorney complained of the terms of the bond. The arbitrator's attention was therefore called to it, and being a matter in difference, it might have been taken into consideration by the arbitrators. If it was not taken into consideration, the party is still concluded

^g 2 Ves. 304.

^h 1 Lord Raymond, 235.

ⁱ 2 Mod. 280.

^j 4 Mod. 182.

^k Owen, 50.

^l Cro. Eliz. 897.

^m 2 Mod. 281.

ⁿ Moore, 34, pl. 112.

^o 9 B. & C. 780.

^p 1 B. & Adol. 723.

by that award. The award concluding the party as to the annuity bond, and the release being co-extensive with the award, it therefore released the defendant as to the annuity bond. If an action were brought on this annuity bond, a reference to this release, I submit, would be an answer to it, according to the cases I have cited.

Tuunton, J.—The mere complaint of the plaintiff's attorney, that there was some hardship in the terms of the annuity bond, does not at all shew, that it was made a matter in difference, or drawn to the attention of the arbitrators in that light. The execution and validity of the bond might have been admitted and agreed on, and therefore, if the argument that the complaint of the attorney as to the terms, was calling the attention of the arbitrator to the bond as a matter in difference, would go to shew, that any *obiter* complaint or remonstrance made by the attorney in the hearing of the arbitrator, was calling the particular subject of the complaint or remonstrance to his attention as a matter in difference. A man may have a mortgage or a bond outstanding, of which he may complain, but which is still so clearly against him, that he never thinks of making it a matter in difference. I will look into the cases.

Cur. adv. vult.

12th May, 1832.

Taunton, J.—After recapitulating the facts of the case.—The question is, whether the arbitrators took the arrears of the annuity into their consideration, and included them in the 8*l.* 10*s.*, and whether the release extends to the bond for the arrears of the annuity. It is perfectly clear from the affidavits, that the arbitrators did not adjudicate on the arrears of the annuity, and that they did not include them in the 8*l.* 10*s.* they directed to be paid. Nor does it appear to me, from the agreement to refer, that the parties intended that the arbitrators should adjudicate on the annuity bond, or that it was ever brought to their attention as a matter in difference. They intended by the agreement, to refer all matters in difference in the action brought to recover the alleged balance of account, and nothing more. It is not to be supposed, they intended the arbitrators to adjudicate on the arrears of the annuity, when a *cognovit* had been given for those arrears on the same day as the agreement to refer was signed, and which arrears would, consequently, be no longer a matter in dispute. If the arbitrators omitted to take into their consideration any thing which the parties intended they should, that might be a ground for setting aside the award. The words of the release are certainly general; but the cases of *Payler v. Homershaw*, and *Solly v. Forbes*, are clear authorities to shew, that the general words of a release may be limited by the particular matter out of which the release springs, and the particular intent of the parties by whom the release is executed; and it is laid down as clear law in the cases cited by Mr. *Dundas*, that the general words of a release may be restrained by a particular recital. Then,

if the intention of the arbitrators in awarding this release, though contained in general terms, was, that it should enure only as to the particular matter referred to them; that is, to the causes of action which were matters in dispute, and the annuity bond being clearly no matter in dispute at that time, the defendant having given a *cognovit* for it, the general release could not refer to the annuity bond, and therefore did not include it; though, if I looked to the release only, the words of it are sufficiently general to include the annuity bond. I am therefore of opinion, that this rule must be discharged; and, as it was applied for contrary to good faith, with costs.

Rule discharged with costs.—*Upton v. Upton*, May 9th, 1832.

COURTS OF REVISING BARRISTERS.

THE proceedings before the Courts of Revising Barristers continue, with few exceptions of a general nature, arising on defective notices, &c., and not from any doubts in the interpretation of the statute. The following decisions, however, are worthy of notice.

It has been determined that *trustees*, who are not "in actual possession," or in "receipt of the rents" for their *own use*, are not entitled to vote. The same rule would of course extend to *mortgagees*; for, by § 23, no person shall be allowed to vote in the election of a knight of the shire, by reason of any trust estate or mortgage, unless in actual possession or receipt of the rents; but the mortgagor or *cestui que trust* in possession shall vote, notwithstanding such mortgage or trust. And, by § 26, the voter must have been in actual possession, or receipt of the rents *for his own use*, for six calendar months next previous to the last day of July. The trustees of chapels, however, have in some instances been admitted.

The next important question was, whether, by the 42d clause, the barristers had the power to expunge the names of unqualified persons, but against whom no objection had been made. The words of the act are, that the barrister shall correct any mistake which shall be proved to him to have been made in the lists. But this, it has been held, does not authorize him to strike out the names altogether, where no objection has been made, although the parties may appear to be unqualified; for the 42d section expressly enacts, that the barrister shall retain the names of all persons to whom no objection shall have been made by the overseers, or by any other person. It seems to have been the intention of the legislature, that the Barrister should not originate ob-

jections himself, nor adjudicate upon any which are suggested to him by electioneering agents, unless due notice has been given to the party by the overseer or some other person. Proper notices having been given, in conformity with the 38th section, by the parties claiming to vote, and no objection being made by any one, it was therefore determined that by the wording of the act the Barristers were precluded from erasing the names.

Objections have been made to the claims of several *partners*, in respect of freehold premises, not resided in, but used as a warehouse and counting-house. The objection to these claims arises under the 24th section. There must be a residence by each partner within seven miles, and they must be separately named in the rate-book.

The payment of rates by the landlord, instead of the tenant, still creates many objections; and the point is not yet finally settled.

The rates must be actually paid or tendered: a neglect of demand by the collector will not excuse the tenant.

The decision of the claims which have been made in respect of shares in the London University, have been deferred.

NOTES OF THE WEEK.

NEW RULES.

THE New Rules, an authentic copy of which we were able exclusively to publish in our last Number on the 3d instant, have been since printed in separate papers. The first set, being fifteen in number, were signed by the late Lord Chief Justice, as well as the other Judges. The second set, or rather the last rule—relating to the counties palatine,—was not signed by his Lordship, but bears the signature of the rest of the Judges.

NEW PATENT OF PRECEDENCY.

Mr. Serjeant Merewether has received a Patent of Precedency.

THE NEW ATTORNEY AND SOLICITOR GENERAL.

Sir William Horne it is said will be promoted to the office of Attorney-General. Rumour has fluctuated for several days, in filling up the vacancy of Solicitor-General; the appointment of Mr. Serjeant Wilde and Mr. Campbell being alternately confirmed and contradicted.

KING'S BENCH MARSHAL AND ASSOCIATE.

It has been stated by one of the daily papers, that this office, being a patent one, continues to be held by the present Lord Tenterden. This is a mistake: Thomas Denman, Esq. the eldest son of the Chief Justice, has been appointed Marshal and Associate.

NEW SITTINGS IN THE KING'S BENCH, BEFORE SIR THOMAS DENMAN, KNIGHT.

In Term.

MIDDLESEX.

LONDON.

Thursday	Nov. 8		
Monday	12		
Friday	23	Saturday	Nov. 24

After Term.

Tuesday	Nov. 27	Wednesday	Nov. 28
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The Court will sit at Eleven o'Clock on the 8th, 12th, and 23rd; at Twelve on the 24th, and at Half-past Nine on the other days.

Causes in the List on the 8th and 12th of November, not disposed of on those days will be tried by adjournment on Friday the 9th, Saturday the 10th, Tuesday the 13th, and Wednesday the 14th November.

None but undefended causes will be tried on Friday the 23d and Saturday the 24th of November.

THOMAS DENMAN, Marshal and Associate.

ANSWERS TO QUERIES.

Law of Property and Conveyancing.

LAPSED LEGACY. VOL. IV. P. 96.

I apprehend it to be quite clear, that the legacy devised by *A.* to *E. F.*, after the death of tenant for life, is not a lapsed legacy. 2 Bac. Abr. 478; and 1 Atk. 418. It has been clearly ruled, that where a legacy is charged on real and personal estate, to be paid after the death of the testator's wife, there if the legatee die after the death of the testator, and before the death of the wife, the legacy goes to the representatives of the legatee. Therefore, in this question, the representatives of *E. F.* will take the legacy. 1 Bro. C. 2. 124, note; Ambl. 167; *Trinstal v. Brachen*. J. J.

LEASE FOR YEAR. VOL. IV. P. 148.

This lease cannot be considered as cancelled; and so many years having elapsed since the execution, could not have affected the title, if it had been, presuming the original vendor had power to grant. J. J.

Common Law.

FEME COVERT. VOL. IV. P. 80.

When a feme covert is desirous of enjoying property independently of her husband, it is

proper to vest the same in some third person by actual conveyance; in which case, if trusts are declared of it for such persons as she shall by deed or will appoint, she may dispose of such property; *Burdon v. Dean*, 2 Ves. jun. 608; *Parkers v. White*, 11 ib. 232; and may transfer it by any ordinary conveyance, taking effect as an appointment of the use, without a fine, and without the consent or confirmation of her husband, in like manner as if sole; she being, as to her separate property, considered as if she were not under coverture. *Peacock v. Monk*, 2 Ves. 190. *Staniford v. Marshall*, 2 Atk. 69. When property, whether vested or contingent, without any power of disposition over it during coverture, is reserved to the feme, there is no means whereby she can dispose of it, except by fine, or private examination in Court, where custom allows. *Richards v. Chambers*, 10 Ves. 580. Upon referring to the above cases, and to 1 Fonb. Treat. 103, where the cases are collected, it is, I conceive, undoubted, that the wife may appoint without the concurrence of her husband. See also 2 Byth. Conv. 509, n. c. are the following words, "A reason which does not apply to the mere execution of a power in performance of a condition." J. J.

ESCAPE. VOL. IV. P. 416.

If a prison takes fire, or is broken open by the King's enemies, the sheriff will not be answerable for the escape of the prisoner. 1 Rol. Abr. 808; 4 Co. 14. But if a mob riotously and by force demolish a gaol, by which the debtors escape, the sheriff or gaoler is answerable to the creditors for such escape. *Elliott v. Norfolk (Duke)*, 4 T. R. 789.

H. A.

LOST NOTE.—TENDER. VOL. IV. P. 416.

A tender, if refused, does not cancel a debt, or lessen the debtor's liability, though a fresh demand before action brought, is necessary, to enable a plaintiff to recover. In this case, I assume the tender was qualified, namely, that B. would pay the money on production of the note: how far a qualified tender, in this respect, will avail, I am not called upon to answer; but I think, that if the owner of the note make a fresh demand on the same, or any subsequent day, and produce the note, A.'s liability is not extinguished; and I am of opinion that B.'s bankruptcy does not affect the question; he was merely the servant or messenger of A. If a good and legal demand can be made, to get rid of the tender, I should consider A. to be placed in the same situation, as to liability, as when B. first tendered payment of the note. W. H.

Law of Landlord and Tenant.

DISTRESS.—DETACHED PREMISES. VOL. IV. P. 339.

I think the landlord, under the circumstances stated by "A Subscriber," cannot justify a

distress of the implements of trade, but may force an entrance into the house, according to the directions of 11 G. 2. § 7; and if there are not enough effects there to satisfy the amount of levy, the landlord may legally seize the implements of trade for the remainder.

W. T.

QUERIES.

Common Law.

STATUTE OF LIMITATIONS.

A. B. inserts an advertisement in the public papers, to the effect, that if the creditors will send in accounts to him of the monies for which he is indebted to them, he will discharge them forthwith; in consequence of which, a person claims payment from A. B., of an account which has been owing more than six years. Does the advertisement amount to an acknowledgment of the debt, and take it out of the Statute of Limitations? W. T.

EXECUTORS.—PAYMENT OF DEBTS.

A testator (in the usual form) charges his personal estate with the payment of his just debts; can any of your correspondents inform me whether the executors, under that charge, are compelled to pay debts of more than six years' standing? W. T.

UNIFORMITY OF PROCESS ACT.

The 11th section of the Common Law Courts Process Act enacts, that if any writ of summons, &c. shall be served or executed on any day, whether in term or vacation, all necessary proceedings to judgment and execution may be had thereon, without delay, at the expiration of eight days from the service or execution thereof. It appears to me, that this provision will have an effect, not intended by the legislature. For since the time for appearance or putting in bail is to be eight days from the service or arrest, and as, according to the above section, no proceedings can be taken on the part of the plaintiff until the expiration of the eight days, the plaintiff can in no case declare *de bene esse*. This may not, perhaps, be any great evil, in the case of serviceable process, but in the case of bailable process it will frequently be very prejudicial to the plaintiff, and will render nugatory the 5th General Rule of Hilary term, 1832, which directs, that in certain cases, the attachment against the sheriff or the bail bond shall stand as a security, but makes it indispensably necessary that the plaintiff, to entitle himself to this security, shall have declared *de bene esse*. D. H.

LORD OF MANOR.

May the lord of a manor erect a house on the waste lands of the manor, without the consent of the tenants? If the house be built, there will be sufficient pasture left for the tenants' cattle.

H. C.

Law of Property and Conveyancing.

PERSONAL PROPERTY.—DESCENT.

A. B. by will bequeathed all his personal property to his executors, in trust to invest so much thereof upon government security, as would produce his wife the annual sum of 400*l.* After her decease, he directs his executors to invest the sum of 2000*l.*, part of the principal money invested for the payment of his wife's annuity, in the funds, in their names, and to apply the dividends arising therefrom to the use of his (the testator's) daughter, for her life; and after her decease, he gives the same 2000*l.* to each of her children (on their attaining twenty one years), for their own absolute use and benefit. Immediately subsequent to this clause, is as follows: "But in case my said daughter should depart this life in the lifetime of her mother, leaving issue, then upon trust to pay such principal money as she would have been entitled to at her mother's death, unto and amongst all and every my daughter's children." In another part of his will, the testator gives all the residue of his property, after his wife's death, to his daughter, "*for her own absolute use and benefit.*" The wife of the testator is still living; but his daughter lately died, leaving a husband and four children her surviving.

To whom will the residue of the property descend, at the death of the testator's wife? Will the husband be entitled to it, as the survivor, on taking out letters of administration to his wife? or will the children of the testator's daughter be entitled to the residue, as well as the sum of 2000*l.*, specifically mentioned?

H. B. A.

MORTGAGE.—SURPLUS.

A. B. has a mortgage on a small freehold estate by way of conveyance, in trust for sale. The mortgagor is lately dead, leaving a will, whereby he has devised the estate to his son for life, with remainder to his first and other sons in tail general, with remainders over. It has been necessary to exercise the power of sale; and after retaining the principal, interest, and costs, there will remain a small surplus. How is this surplus to be disposed of by *A. B.*, so that he may obtain a safe discharge for the same?

There is also another case, with this difference, that the heir at law of the mortgagor, who died intestate, is an infant of the age of

two years. How is this surplus to be disposed of, with the same effect?

J. A. M.

BILL OF SALE.—EXECUTION.

Can *A.*, to whom a warrant of attorney and bill of sale have been given, to secure a debt due to him by *B.*, take possession of property removed into the custody of *C.*, after the bill of sale became absolute, and the property was vested in *A.*? or can he issue execution against it under his warrant of attorney, without being subject to an action of trespass? or must he, upon *C.* refusing to deliver the same over to him, bring an action of trover for the recovery of the goods so detained?

ANTONINUS.

MISCELLANEA.

LAST WILL AND TESTAMENT OF A STUDENT AT DUBLIN.

Cum ita semper me amares,
How to regard you all my care is.
Consilium tibi do imprimis,
For I believe but short my time is.
Amice admodum amande,
Pray thee leave off thy drinking brandy.
Vides qua sorte jaceo hic,
'Tis all for that; O sick! O sick!
Mors mea vexat matrem piam,
No dog was ere so sick as I am.
Secundo, mi amice bone,
My breeches take; but there's no money.
Et vestes etiam tibi datur,
If such foul rags to wear you'll venture.
Pediculas si portes pellas,
But they are sometimes princes' fellows.
Accipe libros, etiam musam.
If I had lived, I ne'er had used them.
Spero quod his contentus eris,
For I've a friend almost as dear is;
Vale, ne plus tibi detur,
But send her up, Jack, if you meet her.

MINGAY.

Mingay never exhibited any marks of wit or propensity to humour; but he furnished Erskine with opportunities without end for the exercise of his fantastical and lively imagination. In an action against a stable-keeper for not taking proper care of a horse, which had been put to stand at livery with him, and his value much diminished, in consequence of the bad treatment he had received, which was stated to have proceeded from his not furnishing proper provender.—"The horse," said Mingay, who led for the plaintiff, "was turned into a stable, with nothing to eat but musty hay in the rack. To such feeding the horse demurred."—"He should have gone to the country," said Erskine.—*Fraser's Magazine.*

The Legal Observer.

VOL. V.

SATURDAY, NOVEMBER 17, 1832.

No. CIX.

——— “ Quod magis ad Nōs
Pertinet, et nescire malum est, agitamus.”
HORAT.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIA- MENT, 1831—1832.

No. V,

THE ANATOMY ACT, 2 & 3 W. 4. c. 75.

WITH the exception of the Reform Acts, there was scarcely any measure which created more discussion and interest in the last session of Parliament than the Anatomy Act. Although we have always thought, and still retain the opinion, that it might have gone further with advantage, yet we consider that the present statute may be productive of considerable benefit. The act alludes, in recital, to the horrible crimes of Burke and Bishop, which, no doubt, were the chief causes of the success of the measure. “Whereas,” it recites, “a knowledge of the causes and nature of sundry diseases which affect the body, and of the best methods of treating such diseases, cannot be acquired without the aid of anatomical examination;”—“And whereas, in order to supply human bodies for such anatomical examination, divers great and grievous crimes have been committed, *and lately murder, for the single object of selling for such purposes the bodies of persons so murdered,*” It is enacted, that the Secretary for the State of the Home Department in England, and the Chief Secretary in Ireland, may grant licences to practise anatomy to any fellow or member of any college of physicians or surgeons, or to any graduate or licentiate in medicine, or to any

person lawfully qualified to practise medicine, or to any medical professor, or to any student attending any school of anatomy, on application by the party, countersigned by two magistrates of the county or borough where the party resides. (§ 1.) The Secretary of State is also to appoint inspectors of schools of anatomy (§ 2); and to direct in what district they shall attend (§ 3). These inspectors are to make returns of all subjects, (giving their age, name and sex, when known,) which have been removed for anatomical examination to any place in their respective districts (§ 4); and also to visit every place where it is intended to practise anatomy (§ 5); notice of which intention must be given to the Secretary of State (§ 12); they are to have for their trouble £100 a year.

By this part of the act, therefore, provision is made for the establishment and regulation of proper schools for the practice of anatomy, which, if thus licensed, are allowed to exist, whilst before the act they were rather permitted to do so by sufferance than by right; as the preventing the interring of a body has been considered an indictable offence.* The act then goes on to provide for the proper supply of bodies. To obtain this object, it is enacted, that it shall be lawful for “any executor or other party, *having lawful possession* of the body of any deceased person, and not being an undertaker or other party intrusted with the body for

* *Rex v. Young and others*, cit. *Rex v. Lynn*, 2 T. R. 734.

the purpose only of interment, to permit the body of such deceased person to undergo anatomical examination; unless, *to the knowledge* of such executor or other party, such person shall have expressed his desire, either in writing at any time during his life, or verbally in the presence of *two or more witnesses during the illness whereof he died*, that his body after death might not undergo such examination, or unless the surviving husband or wife, or any known relative of the deceased person, shall require the body to be interred without such examination," (§ 7). Under this section, it is obvious that all persons who die in workhouses or poor houses, or elsewhere, and are without known relatives, may be handed over by the parish officers for anatomical examination. It is also clear, that if a person is particularly anxious *not* to be so examined, he should express such wish in writing, by his will; or otherwise, as if he die suddenly, he will be liable to undergo the examination.^b

Provision is next made for the express direction by a person that his body shall be examined anatomically; in which case, if he make such direction in writing, or in the presence of two or more witnesses, during the illness whereof he died, or shall nominate any party authorized by the act to examine bodies anatomically, to make such examination, and such direction shall be made known before the burial to the party having lawful possession of the dead body, then such last-mentioned party shall direct such examination to be made, unless the deceased person's surviving husband or wife, or nearest known relatives, shall require the body to be interred without such examination (§ 8). The body, however, is not to be removed for such examination from the place where such person shall have died, until after forty-eight hours after his decease, and twenty-four hours notice to the inspector of the district; nor unless a certificate, stating in what manner such person came by his death, shall have been signed by the medical man who attended such person, or who shall be called in after the death of such person. (§ 9.) It will still, therefore, be impossible for a person to leave his body for dissection, if his relations object to such examination.

The act then provides that professors of anatomy, surgeons, and other medical men, having received licences under the act, may receive bodies for anatomical purposes, if

permitted to do so by the persons lawfully possessed of the body (§ 10); but that all such medical men are to demand and receive with the body the certificate required by the act, which they are to transmit to the inspector, and also a return of the place of death, age, sex, &c., if known, of the subject.

Every body so removed is, before removal, to be placed in a decent coffin, and the party removing the same is to make provision that, after examination, it is to be decently interred in consecrated ground, or public burial ground; and a certificate of the interment is to be transmitted to the inspector within six weeks after the receipt of the body. (§ 13.)

By § 14, persons having obtained licences under this act, are not to be liable to punishment in having human bodies in their possession; thus altering the former law in this respect, it being before the passing of this act a misdemeanor.

By § 15, nothing contained in this act is to prohibit *post mortem* examinations.

One great cause of the odium attaching on dissection was, that it constituted part of the punishment for murder. To remove this cause of prejudice, so much of the 9 Geo. 4. c. 31. as directs that the bodies of murderers may be dissected, is repealed, and their bodies are directed henceforth to be hung in chains, or buried within the precincts of the prison in which they were confined before his conviction, as the Judge may direct.

By § 17 it is provided, that every action or suit which shall be commenced against any person for any thing done in pursuance of this act; shall be commenced within six calendar months next after the cause of action accrued; and the defendant in every such action or suit may either plead the matter specially or the general issue, and give the special matter in evidence.

All persons offending against the act shall be guilty of a misdemeanor, and be imprisoned for three months, or by a fine of £50, at the discretion of the court (§ 18).

It is to be observed, that the act is now in force, having come into operation on the first day of August last. (§ 20.)

DISSERTATIONS ON CONVEYANCING. No. VI.

ON THE PRESUMPTION OF SURVIVORSHIP.

WHERE two persons connected with one another perish in the same event, and it is

^b See the proper clauses to be inserted in wills, 3 L. O. 223.

unknown which died first, a doubt of considerable importance often arises with respect to their heirship and representation. This circumstance is provided for by the Code Napoleon, in a great measure following the Roman law^a, as follows:—"the presumption of survivorship is to be determined by the circumstances of the case; and for want of these, by the circumstances of age and sex. If all the persons shall be under the age of fifteen years, the eldest shall be presumed to have survived: if all of them shall be above the age of sixty years, the youngest shall be presumed to have survived: if some of them shall be under the age of fifteen years, and others above the age of sixty years, the former shall be presumed to have survived the latter: if all of them shall be above the age of fifteen years and under the age of sixty years, the males shall be presumed to have survived, in case the ages are equal, or the difference in them does not exceed one year. If they are all of the same sex, that presumption of survivorship which regulates the succession in the order of nature shall be admitted; the younger therefore in that case shall be presumed to have survived the elder." Code Napoleon, art. 720—722.

This point has come several times before the Courts in this country, and it has been left for them to decide, there being no legislative provision on the subject. It first arose, we believe, in the case of *General Stanwix*, in which the General and his daughter, an only child, had sailed in the same vessel from Ireland; the vessel was cast away and not a single person saved, and there was no evidence whether the General or his daughter was the longer liver. The personal representatives of the two were different, and they brought their respective claims before the Court of Chancery. The cause was heard, and the arguments on each side were so ingenious that a compromise was recommended, to which the several claimants agreed. Mr. Fearne composed an argument for each of the two claimants.^b The point next came before the Court in *Wright v. Netherwood*, otherwise *Wright v. Sarmuda*, a note of which is given in Evans's notes to Salkeld,^c and also in 2 Phillim. 267, in which however the question was not fully met. The leading case on the point, is *Taylor and others v. Diplock*,^d in which a husband

had appointed his wife executrix and residuary legatee; but his wife was drowned at the same time. There was a good deal of evidence to shew that the husband had survived the wife; and Sir John Nicholl held, first, that it was incumbent in such a case on the next of kin of the wife, to prove her survivorship, as the burthen of proof was laid on her; that supposing them to be in the same situation at the time of death, the ordinary presumption was that the husband had more strength and more fortitude than the wife, which would raise the inference that he had survived; but that the evidence being conflicting, they must be taken to have died together; and administration was therefore granted to the representatives of the husband. In this case, therefore, the doctrine of presumption arising from the age and sex of the parties is indirectly admitted by the Ecclesiastical Courts.

In the case of *Mason v. Mason*,^e the point again came before the Court of Chancery. A father and son having been shipwrecked together on a voyage from India, and all on board having perished, the question of the presumption of survivorship was argued at length by Sir Charles Wetherall for the admission of the doctrine, and Sir Samuel Romilly and Mr. Cooke against it. Sir William Grant, M. R. said that there were many instances in which principles of law had been adopted from the Civilians by our English Courts of Justice, but none that he knew of in which they had adopted presumptions of fact from the rules of civil law. In General Stanwix's case, he thought the stress of the argument to be in favour of the representative of the father. In the present case he did not see what presumption was to be raised; but after some hesitation he directed an issue to try the point. It would appear therefore that the doctrine of presumption as to survivorships, derived from the Civil Law, will not be admitted in the Courts of Common Law or Equity, however they may influence the grant of probates and letters of administration by the Ecclesiastical Courts. There is a very late case on the point, which arose in these last Courts, with which we shall conclude these remarks.

Mr. Selwyn and his wife, while on a voyage from Liverpool to Bangor, perished at sea on the 18th of August. They left no issue. By his will he directed that his wife, *if living at*

^a Digest, lib. 34. t. 9. s. 3. t. 5. 22, 23. Voet. ad Dig. 28.

^b Fearne Post. 38.

^c 2 Salk. 593.

^d 2 Phillim. 261.

^e 1 Mer. 308.

his decease, should have all his property, and be sole executrix, and in the event of her dying in his life-time, then the will appointed three executors and trustees. No proof could be obtained as to the exact time at which either of the parties died. Their bodies were found floating near the shore some few days after the wreck.

Addams, for the substituted executor, prayed probate.

Per Curiam.—This case arises out of the unfortunate accident of the *Rothsay Castle*. Instances have occurred where, under similar circumstances, the question has been, which of two persons survived; but in the absence of clear evidence it has generally been taken that both died in the same moment. In the case of *Taylor v. Diplock*, 2 Phill. 271, which was elaborately argued, both on authorities and presumption, the Court held that as the parties must be taken to have died at the same instant, nothing vested in the wife, and granted administration to the next of kin of the husband. Here the wife and her representatives would have no interest in the effects under the words "in case she should be living at his death." The only difficulty arises from the other clause, providing that the substitution of the executors and the devise over shall take effect in the event of her "dying in his life-time." Without going into the general presumption that the husband was the stronger and therefore survived, the intention is so clear, that whatever might be the strict construction of the words in other Courts, I shall decree probate to the substituted executors in common form, the next of kin making no opposition to the grant, and having it in their power, if they should hereafter see fit, to call in the probate and contest the point—Rule granted. *In re Sciryn*, 3 Hag. 748.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XXXIV.

HOW FAR COMPOSITION ARTICLES ARE BINDING.

If a creditor signs articles of composition with his debtor, but the trustee of the debtor afterwards refuse to allow him to prove his debt, he will, notwithstanding that he has signed, be remitted to his former rights. This is established by the following case:

The plaintiff sued on two bills of exchange for 500*l.* each, drawn by George Loft, the 24th of October, and 27th November, 1828, on the defendants, by them accepted, payable four months after date, and by Loft indorsed to the plaintiff. At the trial before *Tindal*, C. J. London sittings after Michaelmas Term, the

ground of defence relied on, was as follows: the defendants stopped payment shortly before their acceptances became due; and, at their request, the plaintiff, on the 9th of March, 1829, attended a meeting of the defendant's creditors, at the office of Mr. Parnter, the defendant's attorney, when it was resolved that their property should be assigned to trustees, and be by them disposed of in the same way as if a commission of bankrupt had been issued against them; and that the creditors should execute a composition deed. The plaintiff was put down as a creditor for 1000*l.*, and some days after signed the resolutions which had been come to, as above, and had been executed by many other creditors. They were signed by two more creditors after the plaintiff; but not by the defendants. On the 19th of May, the defendants requested the plaintiff to sign their composition deed, and stated, that upon doing so he would receive a dividend of five shillings in the pound. The trustees under the deed, however, refused to allow a dividend to the plaintiff on a greater sum than 782*l.*, alleging that the plaintiff had received from Loft 218*l.*, on account of the bills of exchange, before the 9th of March, the day when the plaintiff proved his debt against the defendants, upon the creditors coming to resolutions as above. The plaintiff asserted that he had not received the 218*l.* till after the 9th of March, in which case he was by law entitled to a dividend on the full 1000*l.*, and refused to accept a dividend on less, or to sign the composition deed, unless on those terms. On the 11th of August, 1829, he wrote to require dividends on the whole, and to threaten an action against the defendants; when their attorney, Mr. Parnter, answered him on the 12th as follows: "In answer to your letter of yesterday, asking whether you are to be paid dividends on the 1000*l.*, and stating that, if not, you will take out a writ against Messrs. Woolner without delay, I am compelled to say, that you never can be admitted a creditor for a sum not due to you; you must deduct from the 1000*l.* the 218*l.* received by you in part payment prior to their failure." Shortly afterwards, the plaintiff commenced this action. The defendants' composition deed, by which they covenanted to carry on their business for the benefit of their creditors, and which contained a clause rendering it void if not signed before a given time by all creditors within 300*l.* of the total amount of debts due, was never signed by the plaintiff or the defendants. A verdict was found for the plaintiff, with leave for the defendants to move to set it aside, on the ground that the plaintiff, by having signed the resolutions of March, 1829, was estopped from bringing this action.

The judgment of *Tindal*, C. J., was as follows:—The signature of the resolutions, and the circumstances which followed, do not amount to a bar of the plaintiff's claim in this action. The defendants contend, that a party who concurs in resolutions for a distribution of the property of his debtor, brings himself within the operation of a subsequent deed, by

which the debtor's property is assigned for the benefit of the creditors at large, and that this separate right is thereby suspended till the creditors are satisfied, or at least, placed in the situation in which they originally stood. As a general proposition, this is true; but it is not true where the party, by the act of the debtor, is prevented from taking the benefit of the deed. See how the matter stands in this case. The plaintiff, a creditor of the defendants, enters, with other creditors, into general resolutions as to the disposition of the debtor's property. Some time after, the amount of the plaintiff's claim is contested, and ultimately the defendants and the trustees under the deed of assignment determine, that the plaintiff shall not stand in the character of a creditor at all, thereby denying him every right with a view to which he signed the preliminary resolutions. He may therefore contend that, as far as he is concerned, the resolutions have never been carried into effect at all. I agree that the other creditors are estopped to raise a similar objection, for they have had the benefit of a dividend under the deed; but how can it operate as an estoppel to the plaintiff, who, by the trustees themselves, has been prevented from deriving any benefit under it? Besides this, the plaintiff has been put out of the resolutions, by an original act of the defendants and the trustees; for, by a letter written on the 27th of February, he is expressly told, that "Messrs. Woolner's trustees are of opinion, that after the evidence given by Mr. Loft, before the commissioners at their last meeting, they would not be justified in allowing Mr. Garrard to rank as a creditor." What is that but a consent on their part that he shall be discharged from any participation in the general resolutions? Although it is a fraud on the other creditors, if a party who has concurred in recommending a distribution of the debtor's property, refuses to come in on the same terms with the rest, it can be no fraud where he is prevented from deriving any advantage from the general distribution. Thus in *Boothby v. Sweden*, 3 Camp. 175, Lord Ellenborough says, "If the plaintiffs could shew, that the defendant had refused to give them the notes, according to the terms of the agreement, they might be remitted to the terms of the original remedy; but I think that remedy is suspended by the agreement, unless an infraction of the agreement on the part of the defendant is proved by the plaintiffs." Here there has been an infraction of the terms of the agreement, by the refusal to permit the plaintiff to proceed under it. The rule, therefore, which has been obtained for a new trial, must be discharged.

The other Judges concurred.—*Garrard v. Woolner*, 8 Bing. 258. S. C. 6 Moo. & Pay. 327; see also *Tallock v. Smith*, 6 Bing. 339; *Cropley v. Hillarney*, 2 M. & S. 120; *Es parte Vere*, 1 Rose, 281; and *Mackenzie v. Mackenzie*, 16 Ves. 372.

REVIEW.

A Practical Treatise of Assets, Debts, and Incumbrances. By James Ram, of the Inner Temple, M.A., Barrister at Law. London: Maxwell. pp. 645.

THE objects of this volume, as stated in the Author's preface, are to assist persons providing by will for the payment of debts, mortgages, incumbrances, and legacies; to convey useful information to creditors who have demands against the estate of the deceased; and to unfold the duties and responsibilities of executors, administrators, and trustees.

Mr. Ram appears to be well aware of the important functions of a Law Writer, since, as he says, common experience testifies that in actual practice it is often essential to act on the instant, and frequently a Treatise must be, and consequently is, depended on as containing a faithful statement of the law.

A summary is given by Mr. Ram of the different degrees of weight attached to judicial decisions.

"The authority of a case often depends on the Court in which, or the learning of the Judge by whom, it was decided. A case at *nisi prius* carries less weight, than one decided by assembled Judges at Westminster; and it is certain that, generally speaking, a judgment by a Court in Westminster Hall yields in importance to a decision in the House of Lords. The authority of a case may, moreover, be strengthened by the circumstance, that it was determined by a 'strong' Court, by a Court composed of Judges of great reputation, or by, or with the concurrence, of a single Judge distinguished for his learning; and be weakened by the circumstance, that the Court were equally divided, or were not unanimous."

Amongst the names which have attained the eminence here spoken of, our author mentions Sir M. Hale, Sir J. Holt, Lord Hardwicke, Lord Mansfield, Lord Thurlow, Lord Alvanley, and Sir V. Gibbs. We should have thought that many other names might have been classed in this catalogue; for instance, Sir W. Grant, and Lords Eldon and Ellenborough. But Mr. Ram seems to have proceeded on very lawyer-like grounds; for in support of every name, he has cited cases in which the weight of the authority has been acknowledged.

The author observes, also, that the occasion on which a case has been cited on the bench, and the manner in which it is noticed, may importantly regulate future decisions. Mr. Ram has mentioned many of

these instances in the notes. Thus the way in which an authority is referred to may be materially useful.

"When it explains the judgment delivered in the case cited, and which, according to the report of it, is not very intelligible^a: when the case is noticed by the same Judge by whom it was decided, and, on citing it, he expresses his adherence to it^b, or explains the ground or principle of his decision^c, or the meaning of his judgment, which has been misunderstood^d: when the Judge who cites the case was counsel in the cause, and states the nature of it^e: when the Judge has his own note of the case, and cites it from that note^f: when such judicial notice of a case discloses the end of it^g: when it testifies the authority of the case cited, and expresses an opinion that it ought to be followed^h: when it is expressive of approbation of a case, the soundness of which has been attackedⁱ: when it contains an opinion that the case cited is not law^j, or a statement that it has not been approved of^k."

Mr. Ram, on the ground of the necessity of all these researches, claims what he terms "gentle criticism;" and he is certainly entitled to it. We know few books which bear such evident marks of the most persevering labour, both in setting forth the doctrines in the text, and the ample authorities which are contained in the notes.

The work commences by treating of the various kinds of debts, and devises of real estate in trust for the payment of debts and legacies, with power to raise money for their payment, and the procedure to execute such power. The author next examines charges by way of annuity; and after these, property held to be assets by courts of law and of equity severally.

The following subjects are then successively considered: Personal and real assets; paraphernalia, and a wife's personal chattels; her rent-charge, terms of years, and choses in action; property held to be personal estate, rent, emblements, and mortgage money; heir-looms, and other chattels; con-

version by will of real estate into personal, and of personal into real estate. The statutes 3 and 4 of W. and M. c. 14; 47 Geo. 3, st. 2, c. 74. and 11 Geo. 4. and 1 Wm. 4. c. 47. (relating to the liability for debts of real estates), are next brought under notice. Assets out of England, and property which is not assets, are then treated of; and to these follow probates and administrations, funeral and testamentary expenses; retention of debts due from the testator to executors, heirs, and devisees; the order in which debts are payable, the power of the executor to exercise a preference, and the priorities of creditors. Then comes the consideration of costs; a lessor's action for rent; equitable assets; marshalling assets; and the exoneration of real estate.

The remainder of the volume is occupied with the following subjects:—The order in which equity applies assets; tacking to a mortgage; priority of incumbrancers; mortgagee's will; the Statute of Limitations; satisfaction of debts by legacies; extinguishment of debts; executor's alienation of assets; liabilities of executors; interest on debts; and debts payable out of separate estates, the assets of married women.

Much of the law thus collected in this volume is to be found in detached portions in other treatises; it is here collected more fully and completely than the nature of those works rendered eligible; and for the large class of persons and their legal advisers for whom the book is intended, namely, testators, creditors, executors, administrators, and trustees, it must prove a great acquisition.

REMARKABLE TRIALS.

No. XVI.

CASE OF SAWNEY CUNNINGHAM FOR MURDER. 1635.

CUNNINGHAM was of a respectable family, and received a good education, but falling into dissipated habits, was at length driven to great distress. In order to relieve his wants, he persuaded his wife, a young and exceedingly handsome woman, to encourage the addresses of Mr. Hamilton, a wealthy lawyer, whom she had hitherto always repulsed. The wife reluctantly consented to her husband's plan, and made an assignation with the lover, who promised her a purse of one hundred pounds. The place of meeting was in a church porch. Hamilton wanted to know where Mr. Cunningham, her husband, was; and was informed that he was gone a short journey into the country, which, however, would take him up eight days;

^a 15 Ves. 394.

^b 7 D. & E. 437; 2 Eden, 180; 1 Turn. & R. 240.

^c 2 Ves. 655; Ambl. 301; 1 Turn. & R. 240.

^d 7 Ves. 95; 1 Turn. & R. 238, 239, 244.

^e 1 Atk. 525; 1 Sch. & Lef. 294, 295; M'Cl. 525.

^f 1 Sch. & Lef. 294.

^g 2 Ld. Raym. 1148, 1150; 4 Madd. 278, 279.

^h 6 Ves. 565; 8 Ves. 287.

ⁱ 4 Ves. 323; 1 Sim. 192, 193.

^j 3 Ves. 14, 16.

^k 2 Barn. & Adolph. 577.

whereas madam had posted him, or he had done it himself, in a private place in his chamber at home. Hamilton seemed extraordinarily pleased at his success, and the repose he should find in indulging his passion, now his antagonist was out of the town, as he thought. In a little time both went to Sawney's house, and having entered his bed-chamber, where he was concealed, and a good fire burning, Mr. Hamilton pulled out two purses of gold and gave them to her, and then going to undress himself, Sawney sprang out of his hiding place, and with one stroke of a club he had in his hand, knocked Mr. Hamilton down; not contented with his wife's having the two purses of gold, he determined to have the lawyer's cloaths too; and therefore redoubled his blows, till the poor gentleman died at Mrs. Cunningham's feet. Mrs. Cunningham, not dreaming her husband would have carried matters to such an issue, seemed frightened to the last extreme at what had been done; but Sawney endeavoured to give her ease, by telling her, that he would work himself out of the scrape immediately, and so saying hoisted the body on his shoulders, and went out at a back door which led directly to Hamilton's house, which easily opening, and the darkness of the night favouring him, he carried the lawyer to the vault, and placed him upright on the seat, so the end that the first who found him there might conclude he had died in that place and posture.

It seemed Mr. Hamilton had the day before acquainted a particular friend who lived in his house, with his success, and how he was to have a meeting with Mrs. Cunningham that night. This friend rose about midnight in his night-gown, and stepped down to the vault, where opening the door, he spied Mr. Hamilton sitting, and stayed without a considerable time, till finding his friend did not stir, he opened the door again, and taking him by the sleeve of his coat, was surprised to find him fall down. He stooped to take him up, but found him dead; upon which, being in a great perplexity, he called to mind his acquainting him with the assignation between him and Mrs. Cunningham; he concluded his friend had found no fair play there, knowing the husband to be none of the easiest of men. Fearing that he himself should be thought the murderer, he took up the body upon his shoulders, and carried it to Sawney's house-door, where he set it down. Madam, a little after midnight, having occasion to go down, got out of bed, and opening the door, let the body of her late lover tumble into the house, which putting her into a fright she ran up stairs into the chamber, and told Sawney that the lawyer was come back. "Ay, ay," says he, just waking out of his sleep, "I'll warrant he shall come back no more: I'll secure him presently;" and so saying, sprung immediately out of his bed, put on his cloaths, and hoisted the dead lawyer once more on his shoulders, with a design to carry him to the river and throw him in, but seeing some persons at a distance, coming towards him, he stepped to the side of the street till they were got by, fearing his design might be

discovered. These persons were half-a-dozen thieves, who were returning from a plunder they had made of two large fitches of bacon, out of a cheesemonger's shop; and as they came along were talking of a vintner hard by, who sold a bottle of extraordinary wine. Sawney was somewhat relieved from his fears at hearing this conversation. He had not been at his post long, before he had the satisfaction of seeing this company put their bacon, which was in a sack, into an empty cellar, and knock the master of the tavern up to let them in. The coast being now clear, Sawney conveyed the dead lawyer into the cellar, and taking out the purloined goods, put his uneasy cargo in the sack, and then marched home. Meanwhile, the thieves were carousing, little dreaming what a change they should presently find in their sack. Little or no money was found amongst them, and the fitches were to answer the full reckoning, so that they continued drinking till they thought the bacon was become an equivalent for the wine they had drank. One of them, addressing the landlord, told him.—"That he must excuse him and his comrades for bringing no money in their pockets to defray what they had expended, especially at such an unseasonable time of the night, when he had been called out of his bed to let them in; but landlord, in saying this, we have no design of doing you any wrong, or drinking your wine for nothing. For we have got two fitches of bacon in a cellar hard by, which will more than answer our expenses, and if you care to have them, they are at your service."—"Gentlemen," said the vintner, "if the fitches of bacon, you say you have, are good, I'll take them off your hands, and quit scores with you, so they but answer my demands." Immediately one of them said he would go and fetch them, and accordingly coming into the cellar strove to hoist the sack up. "Zounds," says he, "why, I think the bacon is multiplied, or I am deceived. What a load is here to gall a man's shoulders! The vintner will have a rare bargain." And so saying, he carried the corpse on his shoulders to the tavern. On opening the mouth of the sack, they were surprised to see a man's head peep out. The vintner presently knew the lineaments of the deceased's face, and cried out, "Rascals, this is the body of Mr. Hamilton, the lawyer, and you have murdered him." At this all the six were in the utmost horror and confusion, and really appeared like the guilty persons. But the vintner, observing them endeavouring to get away, made such a noise of murder, that immediately all the family were out of their beds, and the watch at the house-door, to know the reason of such an alarm. The thieves were instantly conveyed to a place of durance for that night, and in the morning were sent to the main prison, when, after a little time, they took their trials, were found guilty of Mr. Hamilton's death, and executed accordingly.

Cunningham continued his ill course of life, committed many robberies and several murders, and was at length condemned, and executed at Leith, on the 12th April, 1635. When

he went to the place of execution, he betrayed no signs of fear, nor seemed any way daunted at his approaching fate. As he lived, so he died, valiantly and obstinately to the last, unwilling to have it said that he, whose hand had been the instrument of so many murders, proved pusillanimous at the last.

THE LAW COMMISSIONERS.

To the Editor of the Legal Observer.

SIR,—I see by the Appropriation Act for this year (2 & 3 W. 4. c. 126), the last, and doubtless the most agreeable act of the session, that the sum of 15,000 *l.* is allotted to the Common Law and Real Property Commissioners; the sum of 10,000 *l.* to the Record Commissioners; and other sums to other Commissioners connected with the Law. Now I am perfectly willing to admit that the services of eminent professional men are absolutely necessary for the safe and effectual reform of the Law, and also that such services must be properly compensated. I do not therefore mention the sums received invidiously, nor do I think we have a right to begrudge the learned persons appointed Commissioners a proper reward for their labours. Neither will I say what often has been said, that they have done but little, while a great portion of what they have proposed remains still to be carried into law. No, Sir, my present purpose is simply to call your attention to the uselessness of allowing two sets of Commissioners to do the same work, without at least acting in concert. Thus we have a Prescription Bill (now passed into law) proposed by the Common Law Commissioners, and another Bill having the same object, but widely different in its provisions, brought in by the Real Property Commissioners. We have these last learned Commissioners considering the state of the law affecting the Church, whilst at the same time the same subject is occupying the attention of the Ecclesiastical Commissioners. We have a long Report from the Ecclesiastical Commissioners on the subject of Wills, and in a few weeks we are to have a Report on the same subject from the Real Property Commissioners: and many other instances of the same kind might be given. Now it appears to me that the public has considerable cause to complain of this mode of conducting their business. The great object of appointing several Com-

missioners,—the division of the labour—will be entirely lost, if the same subject is to be considered by all, or more than one. There should be a greater spirit of union among the whole body of Commissioners; they should have frequent meetings together, and the various labour should then be allotted to those best qualified to sustain it. The Commissioners would then be spared the reproach of protracting their period of office from sordid motives, and the difficulties which arise from their own conflicting opinions on the same matters would be prevented. We now see them going over the same ground, but taking different roads, and arriving at different conclusions.

I am, Sir,

Your obedient servant,
Z.

UNITED LAW CLERKS' SOCIETY.

Sir,

My attention has been drawn to an advertisement on the cover of your last Number, which, I think, deserves the consideration of the profession; and in the hope that, through the medium of your useful miscellany, it may meet with notice, I trust these few lines may find a place.

A society, it seems, has been established, under the name of the "*United Law Clerks' Society*," and, as the advertisement concisely states, the objects are "a fund, as a provision in cases of sickness, superannuation, or death;—a casual fund, to relieve members in distress, and also Law Clerks not being members;—and, lastly, to provide situations for members."

To the readers of your pages, it is hardly necessary to advert to the peculiar situation of an attorney's clerk. The salary he receives, in most cases, hardly affords him more than the means of living decently, while in a state of health; and the constant and laborious application required, while it impairs his health, leaves him too often in a state of destitution. The claims which our Clerks have on us, I should hope, are sufficiently felt by the whole profession to induce it to render assistance, where an opportunity presents itself of ameliorating their condition; and the benefits likely to result from the establishment of this society are so obvious, that I trust it is only necessary to introduce it to the notice of the profession to insure its support.

I have the honor to be, Mr. Editor,

A CONSTANT SUBSCRIBER.

Nov. 12, 1832.

[*.* We most willingly insert this communication, and earnestly recommend the society (which we have the strongest reason for believing will be well conducted,) to the liberal support

of all branches of the profession. The comfort of those who perform the bulk of professional labour, ought to be promoted on grounds of policy, as well as justice and humanity. Much is entrusted to this numerous body, and by increasing the respectability of its members, we secure the faithful performance of their duties. The good feeling towards them, which would be indicated by a general subscription by the Profession, we doubt not, would be met by a diligent and grateful return. We shall be glad to find room occasionally for the advertisements of the Society, on payment of the duty only. ED.]

DISPUTED DECISIONS.

No. XII.

WARRANTY.—DISCONTINUANCE.—ESTOPPEL.

Doe d. Thomas v. Jones, 1 Tyrwhitt, 506.

The doctrine of warranty, described by Lord Coke as "one of the most curious and cunning learnings of the law, and of great use and consequence," having long been represented by text writers to have become "a matter of speculation rather than of use," rarely receives a due share of the attention of the legal student; and it is to be regretted that the boasted avowal that his lordship's invaluable works will soon be rendered useless, has partially had its effect in generating such an indifference to his authority, that an ignorance of his labours is (though erroneously) often deemed a better qualification for the future practitioner, than the knowledge of "all the amiable and admirable secrets of the law," with which the institutes abound; this case, however, shews, that an acquaintance with them, so far from being a disadvantage, is still necessary to the legal professor.

The facts were, that in 1736, the lands were settled on *A.* for life, remainder to *B.* his intended wife for life, remainder to the heirs of her body by *A.*, remainder to him in fee; that they had issue *C.*, their eldest son, whose son was the plaintiff's lessor; that *B.* died in 1788, *A.* in 1802, and *C.* in 1822; that in 1784, *C.* by lease and release and fine, conveyed to one Price in fee, under whom the defendant claimed; but as he did not prove the proclamations at the trial, it was only receivable as a fine at common law; and also, that the plaintiff, who had entered in due time, took a verdict, with leave for the defendant to move for a nonsuit; a rule for which was obtained, on the grounds, first, that the fine created a discontinuance—secondly, that it worked an estoppel—and, thirdly, that the plaintiff was bound by force of the warrants. After hearing counsel on these points, the Lord Chief Baron said, the question was, "whether the fine had taken away the plaintiff's right of entry, and that the Court was of opinion that it had." His Lordship, in his judgment, admitted that the cognizor had no estate when he levied the fine, and

that it operated in its creation only by estoppel, which the estate he afterwards took would feed, as long as it rightfully might, *i. e.* during his life and no longer, but said, "that the plaintiff was not at liberty to insist upon this point, he being a privy to the cognizor as heir in tail, and therefore precluded from saying that the parties to the fine had nothing in the land at the time it was levied." Adding, "that by the 27 Ed. 1, c. 1, the parties to a fine, and their heirs, were prohibited from avoiding it, by pleading that before and at the time of the fine, and afterwards, the demandants or their ancestors were always seised; and in the case of Fines, 3 Co. 89 a, the effect of this provision is stated to have been to take away from the issue in tail the power of averring *quod partes finis nihil habuerunt*. Exception (continues his Lordship) had been taken that the 27 Ed. 1 did not extend to heirs in tail, but only to heirs in fee simple; to which it was answered, that although the issue in tail was not barred by any fine by his ancestor before the 4 Hen. 7, yet he was ousted to aver in such cases *quod partes finis nihil habuerunt*; and being privy and heir to him who levied the fine, was, by the 27 Ed. 1, estopped and concluded to annihilate the fine of his ancestor by such plea; and although it is provided by the stat. *De Donis quod finis ipso jure sit nullus*, that is to say, to bar the right of the issue in tail, yet it is an estoppel to him to say *quod partes finis nihil habuerunt*; and he refers to 22 Ed. 3, c. 17. Fitzherbert, tit. Estoppel, pl. 280. 33 Ed. 3, where instances of such estoppel occurs." His Lordship then referred to *Zouch v. Bamfield*, where it was said, that "though the stat. *De Donis* avoided the fine, as to the foreclosing the issue in tail of his forefellow, yet it remains in force to restrain the heir in tail from averring any thing against the fine, as well as the heir in fee simple; and that in all cases where he, against whom a fine is pleaded, claims by him who levied the fine, he shall not have the same averment." As to the first point, *viz.*, "that the fine created a discontinuance," the Court "cautiously abstained" from acceding to it, although it gave it an operation which virtually abrogated the provisions of the statute *De Donis* in favor of the issue in tail, by holding, that "the fine with the warranty took away the plaintiff's right of entry:" this, it is submitted, may be considered doubtful, inasmuch as *C.* was not tenant in tail in possession, it being laid down in 8 Rep. 54, that an heir is not bound by a warranty descending upon him where there is a right of entry; see *Doe d. Jones*, 1 B. & C. 238. An estate being settled to the husband for life, remainder to trustees to preserve contingent remainders, with remainder to him in tail; it was held, that he could not, though in possession of the life estate, discontinue the estate tail, they being two distinct rights. *Driver v. Hussey*, 1 H. B. 267, is another authority upon the same point. In *Doe v. Harris*, 5 M. & S. 326, it was held, that the cognizor, or remainder-man expectant on an estate for life, not having any seisin, his fine divested

no estate, and consequently passed no interest. In *Doe v. Lorrain*, 8 B. & C. 606, that a fine levied by one who had no seisin was inoperative. *Doe v. Elliott*, 1 B. & Ald. 85, established, that where one of two tenants in common of a reversion levied a fine of the whole, an actual entry by the other was unnecessary to avoid it. *Ree v. Power*, 2 New Rep. 1, where the fine was levied by a remainder-man, is also an authority upon the same point; and in Coke Litt. 347, b. it is said, under a *videlicet*, that an estate tail cannot be discontinued but where he that maketh the discontinuance was once seised by force of the tail, which is to be understood, when he is seised of the freehold and inheritance of the estate in tail, and not where he is seised of a remainder or reversion expectant upon a freehold—which freehold (as often hath been said) is much respected in law." In *Smist v. Heath*, Carth. 110, it was said to be a maxim in the law, that he who hath no freehold in the land, cannot by any means discontinue the estate therein, citing Owen, 66; Dyer, 251; Perk. 615; 18 Ed. 4, 2; and in an anonymous case, in Styles, 158, upon a special verdict, where the case was, tenant for life, remainder for life, remainder in tail, remainder to his right heirs in tail,—the first remainder-man in tail levied a fine in the life of the tenant for life, and the question made was, whether the estate tail was discontinued. No judgment appears to have been given; but the case is mentioned in order to introduce the argument of Mr. Justice Twissden to the contrary, who argued, that the estate was not altered, neither to the right nor by way of estoppel. 43 Ed. 3, § 22; 46 Ed. 3, § 23. An estoppel supposeth a thing to be done; and therefore, if the thing be impossible, which is alledged by way of estoppel, it can be no estoppel; Bro. Ab. Grants, 49. *Pech v. Chancel*, Cro. Eliz. 827, is also an authority that none shall make a discontinuance, but he who is seised of an estate tail in possession; and *Page v. Lever*, 2 Ves. jun. 450, and *Dabson v. Leudbetter*, 13 Ves. 230, are also authorities in Chancery upon the same point; and in 9 Rep. 106, it was held, that no fine nor warrant bars any estate which is not divested and put to a right. Not to multiply authorities, it is presumed that the above establish the point—that a fine levied by a tenant in tail does not operate as a discontinuance of the estate tail, if the cognizor be not in the seisin under the tail at the time of the fine being levied; and, consequently, that the fine of C. did not take away the plaintiff's right of entry, which is the effect of a discontinuance, divesting the estate tail, and leaving the party only a right of action; and therefore it is submitted, that the warranty in the fine did not descend upon the plaintiff, his right of entry not being taken away, no tortious fee being gained by the fine, and, consequently, the rightful estates under the entail remained still subsisting; besides which, it is generally said, that when the estate is not turned to a right, then they to whom the estate belongs are not, either by force of any warrant or statute, driven to their action or

claim: and this stands with reason; for why should he who is not disturbed be compelled to make any entry or claim to recover a right which is not lost; 9 Rep. 106; *Goodright v. Jones*, Cru. on Fines. 251; Co. Litt. 327, 388; 1 Mod. 4; *Hardres*, 401; *Carhampton v. Carhampton*, 1 Irish T. R. 567.

As to the second point, "that the fine worked an estoppel," the Court intimated a strong opinion against the defendant, but held, that the plaintiff was precluded from availing himself of it, he being a privy to the cognizor, and thereby prevented him saying, "that the parties to the fine had nothing in the land at the time it was levied;" as to which, being the third point, Lord Coke, in his 20th reading, under the title "Averment," says, "Against a fine *sur concessans de droit tantum et sur grant et render*, and a fine *sur release* levied to or by tenant in tail, the issues may aver continuance in the possession of their ancestor. For, although the statute *De Donis Conditionalibus* was made 13 Ed. 1, and our statute made the 27 Ed. 1, yet it was not the intention of this statute to take away the liberty and benefit of the issue in tail, which the statute *De Donis Conditionalibus* had given to them; for it appears, that the intention of the makers of this statute was, to reform such averments which were against the laws and customs of England anciently used, and not to take away such lawful averments, which, by the statute *De Donis Conditionalibus*, was given to the tenant in tail; but against a fine *sur concessance de droit come ceo*, and to which the ancestor in tail is a party, the issue in tail shall have averment of continuance in possession in his ancestor against the fine in some cases, and in some not; and therefore I have taken this diversity against a fine levied by tenant in tail *sur concessance de droit come ceo*, and the issue in tail shall have no such averment; but if it be levied to him this shall not conclude the issue (as diverse books say) to have continuance of possession." It is observable, that in the 27 Ed. 1, reference is expressly made to fines passed "as well in time of King Henry our father (which was prior to the statute *De Donis*) as in our time; the parties of such fines, and their heirs, contrary to the laws and customs of our realm of ancient time used, were admitted to annul and defeat such fines," and which Lord Coke, in his 18th reading, assigns as the reason for the statute, which, however, makes no distinction between the different fines, nor does it particularize any, so that it does not appear to authorize the distinction made by the learned Commentator in his 20th reading; nor does there appear any reason why, upon principle, so far as respects this objection, such a distinction should be made, seeing that, whether the party be active or passive, he is still a party, and his heirs are privy, especially as the "diversity taken," at the close of the reading, seems destructive of the privileges given to the issue in tail by the statute *De Donis*, and which he had previously stated it was not the intention of the statute 27 Ed. 1 to take away; besides which, he appears to have considered this as

a point not then judicially determined; the reference to diverse books, in the last sentence, being confined to fines levied to the issue in tail, who are not concluded; and the reference to *Teye's case*, 5 Rep. in the margin of the first reading, shews, that the tract on Fines was written after his Lordship's Reports.

It is not expressly stated in 3 Co. 89 a, that the 27 Ed. 1 extended to the heirs in tail; and it appears from Jenk. 192, pl. 97, and 2 Jones, 241, that the words "parties and privies," in the 18 Ed. 1, are to be understood as referring to a fee simple alone; and in Brooke, pl. 35, it is said, that "the statute is intended of estates in fee simple only, where the heir claims only by the same ancestor; but upon an estate tail he claims by the gift;" and Mr. Justice Bayley's observation, addressed to the defendant's counsel, fully establishes this point, supposing it to have been previously doubtful; and in Litt. 747, Co. 391 b, it is said, "But the issue in tail, as to the tenants tailed, is not in such case (the felony of the ancestor) barred, because he is inheritable by force of the statute, and not by the course of the common law." Assuming, therefore, from the above authorities, and from 2 Inst. 254, that the 27 Ed. 1, did not extend to estates tail, nor that the 18 Ed. 1, the words of which, it is admitted, are very general, did not abrogate the statute *De Donis*, 2 Inst. 517, it is submitted, that the plaintiff was not estopped by the fine from averring that the parties to it had nothing in the land at the time it was levied; it being a rule in the construction of statutes, that the words must be taken in a lawful and rightful sense; and Lord Coke says, that the words, "whereof no fine is levied in the King's Court," are to be understood, whereof no fine is lawfully or rightfully levied; but if a fine be inoperative and void, making no discontinuance, then, it is submitted, that the plaintiff was not a privy within the act, which must be construed as including only parties to fines lawfully levied, and having a legal operation; but admitting the strictness of the rule, that nothing shall be averred against a record, yet jurors are not estopped; 4 Rep. 53. As a warrant derives both its nature and its operation from tenure, and may be annexed to any conveyance, transferring, creating, or extinguishing an estate, it is necessary that there be some estate to which it may be annexed, in order to support it, and that it be put to a right before or at the time of the warranty; 10 Rep. 96. The judgment in this case admits that there was no estate, although it is subsequently stated, that, "as against the plaintiff the fine created an estate, to which the warranty was annexed, and that, to protect such warranty, this fine had, by reason of the warranty, the effect of a discontinuance, and that the entry of the plaintiff's lessor was consequently taken away;" but as the fine, which was the principal, had no operation in passing any estate, the warranty, which was merely an accessory, was of no avail; and as it is clear that a warranty cannot be annexed to a chattel interest, on account of its inferiority, to hold that it can be

annexed to no estate at all, is opposed to every principal of tenure; and in 10 Rep. 96, it was held, that if one warranted no estate, the warranty is void; and so it was if it was determined, which the learned Chief Baron admitted was the fact, on the cognitor's death; and a warranty cannot enlarge an estate. And in Bridg. 77, it is stated, "where one binds him and his heirs by this, they are not bound to warrant new titles, or any right that commences after warranty made, but such as were in issue at that time." If a warranty is to have the effect ascribed to it in this case, the modern notion that covenants are more beneficial, 2 Saund. 136, seems quite erroneous.

C. S.

SUPERIOR COURTS.

In the Equity Exchequer.

PARTIES TO SUITS IN EQUITY.—CO-PARTNERSHIPS.—PAROL EVIDENCE.—MISREPRESENTATION.—CONCERT.—INADEQUACY OF CONSIDERATION.—CONFIRMATION.

Although a person entering into an agreement does not disclose that he contracts as an agent, yet both at law and in equity the contract may be enforced by the principal.—The persons who are interested in the question must, in some shape or other, be parties to the record.

It is a general rule, that all persons interested must be parties to a suit in equity; but where the parties are numerous, if they have one common interest, some of the members may sue in their own names, on behalf of themselves and the others.

Although an agreement between parties be in writing, yet parol evidence as to the base of the transaction may be received.

When a misrepresentation is made, the parties making it, knowing their statement to be not true, an action at law may be maintained.

If a case of deception is made out, it is a ground for proceedings in a Court of Equity.

A contract entered into upon a misrepresentation by one of the parties knowing it to be a mis-statement, will be declared void. Persons acting in concert with the principal defendant may be decreed against, with costs, and their evidence cannot be read.

Inadequacy of consideration alone, not a ground for making a contract void.

A confirmation of an agreement, whilst the party to whom the facts which form the basis of an agreement continued ignorant of their having been misrepresented to him, does not deprive him of the relief he was entitled to.

Lord Lyndhurst.—The plaintiffs are members of a partnership called the British Iron Company.

The object of this suit is to vacate three agreements entered into in 1825; and the grounds on which it is contended that they ought to be declared void are, that Mr. Attwood made various misrepresentations as to the value of this property. Three other of the defendants are said either to have acted in concert with Mr. Attwood in their representations, or in afterwards suppressing the truth. An objection was taken that this suit could only be commenced in the name of the persons contracting, and not in the name or on behalf of the partnership; but this ground has, in my opinion, failed. For although a person entering into an agreement does not disclose that he contracts as an agent, yet both at law and in equity the contract may be enforced by the principal. Those who are interested in the question must, in some shape or other, be parties to the record. The next objection was that all the parties interested must be brought before the Court; but were the law so, justice could not be effected; for what with a great number of abatements which must happen were the parties very numerous, the cause could never be brought to judgment. I admit it is a general rule, that all persons interested must be parties; but there are exceptions to that rule, as in the case of *Meux v. Maltby*, in the second volume of Mr. Swanston's Reports. From that time it has been a rule, that when the parties are numerous, if they have one common interest, some of the members may sue in their own names on behalf of themselves and the others. This case does not come within the case of *Van Sandau v. Moore* 1 Russ. 444, and another case that was cited. I do not think these cases apply. I am, therefore of opinion, that the parties to this record are sufficient to sustain this proceeding. A third objection which has been made is of a different description, that nothing is said in the written agreement, of the price of iron or otherwise; and it is said that any other evidence of it would have the effect of introducing parol testimony to alter a written agreement; but the evidence goes to affect the *base* of the transaction, that there was a misrepresentation of the facts, and a deception. The law on this subject is to be found in the case of *Elliings v. Tresham*, in the reign of Charles the Second (1 Lev. 102); *Dusney v. Selby*, 2 Lord Raymond, 1118: it has been recently confirmed in the case of *Dobble v. Stevens*. As far as the cases at law go, when a misrepresentation is made, the parties making it knowing their statement to be not true, an action at law may be maintained. The point has been deliberately decided in *Edwards v. Mac Leay*, in Cooper's Reports, p. 308, before Sir Wm. Grant, the Master of the Rolls. That case came by appeal before Lord Eldon, who, after hearing the argument, confirmed the opinion of the Master of the Rolls. My judgment and my opinion is not at variance with the principle on which that case was decided. If a case of deception is made out, it is a ground for proceeding in a Court of Equity.

Now then, as to the facts. It appears that

after the British Iron Company had been established for some time, that a proposition was made by Mr. Attwood to three gentlemen, for sale of the iron works, and it was entertained by the Company; but the Company declined to proceed in the absence of Mr. Philip Taylor, who was then in Cornwall, but who, on his return, went down to the mines—not indeed to make a minute examination, for he did not inspect the books. The negotiation was conducted on one side by Mr. Attwood and Mr. James, and by Mr. Philip Taylor on the other. In the meetings, statements were made by Mr. Attwood, which were noted down by Mr. P. Taylor, and they are contained in a writing which has been produced.

Mr. P. Taylor and the company were satisfied with these representations, and the agreement of the 10th of June was entered into; and it was to have been completed by the 10th of November. It appeared, however, that the title could not be completed by that time, and on the 10th of October, another agreement was entered into; but Mr. John Taylor was then absent in Cornwall, and Mr. Attwood having declared he would only contract with the three persons, he would not then sign the contract; and Mr. Attwood then went down to Congreaves, where the works are, not as it appeared to me for any thing wrong, but to take care that the officers of the British Iron Company should not interfere with the works. It has been stated that Mr. Attwood always enjoined secrecy, and hence a fraudulent interest has been inferred; but when I consider how his interest would have been affected, had it been known that such a negotiation had been proceeding and failed, I cannot impute any fraud to Mr. Attwood on that account. Mr. Taylor returned, but Mr. Attwood objected to the form of the agreement, it being made with the Company and not with the three individuals. Notice was then given by Mr. Martineau to Mr. Attwood, that unless he made good the title, or returned the deposit, proceedings would be taken. A meeting of the directors took place, when it was said that the price was too high, and suggested a deputation should be sent down; to which Mr. Attwood having consented, the deputation went down. Certain books were produced, and twelve statements in writing were made of the costs of manufacturing iron.

The deputation was satisfied, and they made their report accordingly, that Mr. Attwood had redeemed his pledge to verify the statements he had previously made. An agreement was then signed on the 4th of November, and the British Iron Company were put in possession on the 9th of November.

It is contended by the plaintiffs, that the statements of the prices of manufacture were misrepresentations, and known to be so by Mr. Attwood at the time; and they state, that the further statements in writing, produced to verify the former statements, were false, and known to be so by Mr. Attwood. Mr. Attwood says he is not responsible for the statements written down by Mr. P. Taylor, as

they were Mr. Taylor's calculations; but I think he is answerable for the statements of the price of manufacturing pig iron. It must be seen what is the evidence upon it. I have come to this conclusion, that this part of the case is a mis-statement to a very large extent. It is proved that the cost of manufacturing pig iron is 5*l.* 8*s.* a ton; but the statement of Mr. Attwood was 4*l.* 12*s.*, making a difference of 16*s.* a ton. Indeed I find that the average price of manufacturing pig iron at another place was 5*l.* 9*s.* per ton. I am satisfied in my mind with respect to these results: so that if these statements were meant to represent the expense of manufacturing pig iron, there was a considerable mis-statement. I now come to those parts which relate to the conversion of the iron; and I think that many articles of charge are omitted, which ought to have been inserted, and they amount, I think, to about 5*s.* a ton: so that there is a considerable mis-statement as to the expense of the conversion from pig iron.

The next question is, whether it was intended that these papers should represent the cost of making iron, or converting it. Mr. Attwood says, he had no knowledge of the expense; that no account had been kept since the time of his father, and that all the statements were made on certain assumptions; and that the works should be carried on at Congreaves, so as to diminish the several expenses of the work. Now were these papers made on these assumptions? I find no evidence or trace to conclude that these statements were made on these assumptions. The statements were made to represent the actual state of things, and not a hypothetical calculation. Mr. Pontment proves that Mr. Attwood said the statements were made on the actual profits; and the evidence of Mr. James Harrison is decisive upon the point. The statement is made in the papers, headed Dudley Wood, 6th June, 1825. It purports to be a statement of the actual cost of manufacturing pig iron at that very time. It was a representation of the actual state of things. I am of opinion that the statements were intended to represent the actual state of things, and were not statements upon assumption. Was it known to Mr. Attwood, that they were mis-statements? That appears to me to be a material question. [The learned Judge here went through much of the evidence.] It appears therefore that there were mis-statements within the knowledge of Mr. Attwood. The next question is, how far the other parties are connected with these misrepresentations. [Here again the learned Judge went into the evidence.] Is there then a case of concert made out against James and Edwards, I think there is; and the consequence is that their evidence, which was read *de bene esse*, cannot be received.

To summon up.—There was a misstatement of the basis of the agreement. There was such a mis-statement with the knowledge of Mr. Attwood. The coals were lost, which was equal to what is technically called a fault. It does not appear that that was known to Mr. Attwood,

but false representations were made by the agent of Mr. Attwood. The next question is that of valuation. I consider that the valuation was under 500,000 pounds; but that alone is not a ground for making the contract void. Has a case been made out against Mr. Philip Taylor? The charge against him is, that he received pecuniary compensation to conceal from the directors the actual state of things. Now he had himself three hundred shares, and his relations and friends had also shares. His interests were strong to prevent any imposition being practised on the Company, and he was an agent to the Company at 2000*l.* a year; 600*l.* a year travelling expenses; and he received a small per centage upon the profits. There is nothing which leads me to a conclusion of any fraud on the part of Mr. Taylor. I think he acted imprudently in accepting the loan of 2000*l.* to the house in which he was a partner. It does not appear, that from these circumstances any case arises against Mr. P. Taylor. [The learned Judge then went into the other evidence against Taylor.] On the whole, I think there is not sufficient reason to implicate him, in concert with Mr. Attwood; and the inference attempted to be drawn against Mr. P. Taylor, in respect to the quarterly accounts, cannot be supported. Upon the whole, then, as far as relates to Mr. P. Taylor, it is not established. The only remaining question to be considered is, how far the acts of confirmation, on the part of the Company, have deprived the plaintiff of relief; and with respect to the fault in the coal mine, it is contended, that Mr. Taylor, the partner and agent of the company, having known the fact, it was too late, at the end of six months, to come into this Court for relief; and on that ground, I do not think that this bill could have been entertained: but when the deputation went down, the books had been removed, as also had the papers; in fact, there was a clearing out of every means of getting information as to the state of the works; but Mr. Taylor had no opportunity of getting a knowledge of the facts on which the imposition had been practised upon them; and he was fully employed in the operations of the concern. When the errors in the quarterly accounts were discovered, and that the profits fell short of the expectations that had been held out, they then instituted this suit. I do not think, therefore, that there has been any act of confirmation to deprive the Company of any relief they were previously entitled to. I am bound to say, I am satisfied there was a misrepresentation of particular facts made by Mr. Attwood: the result is, that the agreement must be vacated, the money must be returned, and the parties who have been in possession must account for the profits; Mr. Attwood must pay the costs; Mr. Taylor must have costs, and the bill as against him must be diminished; Mr. James and Mr. Edwards must also pay costs; interest to be calculated on the money. Minor points to be gone into hereafter.—*Small v. Attwood and others*, Gray's Inn Hall, 1 Nov. 1832: L. C. B.

NOTES OF THE WEEK.

SOLICITOR GENERAL.

Mr. Campbell has been appointed Solicitor General. We understand that the Master of the Rolls has distinctly stated that he does not intend to resign.

INCORPORATED LAW SOCIETY.

According to the original plan of this Institution, the Hall was intended to be open at all hours of the day, for the resort of members who might find it convenient to fix certain times for their regular attendance, or for any special appointments.

This part of the design has been acted upon since the Institution opened for the purposes of business, at the beginning of July last; but more especially since the commencement of the present Term, during which the Hall and Library have been open from nine in the morning till ten at night.

We gave, nearly two years ago, a statement of the objects and advantages of the Society; and may here point out in particular the utility of a place of general resort in the neighbourhood of the Inns of Court and public Law Offices, where professional men may be enabled to meet others, either from the country or from distant parts of the town; where they may congregate whilst waiting to attend the sittings of the Courts, the Judges and Masters, or the consultations of Counsel; and where also, in difficult matters, they may obtain information from members of experience.

In following up this part of the design, the Committee of Management have lately recommended that the Members of the Society should daily assemble in their Hall at Two o'clock, or as near thereto as may be convenient: it being considered that this will be an effectual mode of accomplishing some of the most important objects of the Society.

SITTINGS IN CHANCERY AFTER TERM.

In lieu of adjourning for the usual number of days after Term until the First Seal, it is said the Courts will continue to sit, and fix the holidays for the second week in December, during the time of the expected general election; but this has not been definitively announced in the several Courts.

COURTS OF REVISING BARRISTERS.

The following appear to be the only points

involving any principle of Law, which have occurred since our last Number.

It has been held that the brethren of a Charitable Hospital are not entitled to vote, where the right is held subject to obedience to certain arbitrary Rules; such as not to leave the town without permission, &c. An office held *quandiu se bene gesserit*, means the possession of such an office as can only be forfeited by the commission of an offence against the common or statute law of the realm.

A question has also arisen on the claim to vote by Purchasers of Land-tax under 42 G. 3; but the point has not been decided.

It has been adjudged, that the notice of objection must be signed by the person who objects.

REGULATION FOR ISSUING WRITS IN THE KING'S BENCH.

MICHAELMAS TERM, 3 W. 4.

It is ORDERED, that all Writs of Summons, Distringas, Capias, and Detainer, issued in the county of Middlesex, shall be issued, signed, and sealed, by the Signer of the Bills of Middlesex, and that all such Writs issued in any other county or city, shall be issued and signed by the Signer of the Writs, in the King's Bench Office, and sealed by the Sealer of the Writs, until further order.

(Signed) J. LITLEDALE,
J. PARKER,
W. E. TAUNTON,
J. PATTERSON.

HOME CIRCUIT.

WINTER GAOL DELIVERY.

Hertford, Thursday, Nov. 29th, at Hertford.
Essex, Saturday, Dec. 1, at Chelmsford.
Kent, Monday, Dec. 10th, at Maidstone.
Sussex, Saturday, Dec. 15th, at Lewes.
Surrey, Wednesday, Dec. 19th, at Kingston-upon-Thames.

Before the Honourable Sir Joseph Littledale,
and the Honourable Sir John Gurney, Knt.

ANSWERS TO QUERIES.

Rate of Property and Conveyancing. DISTRESS.—MORTGAGE. P. 16.

A mortgagee may at any time during the continuance of his mortgage, give notice to

the tenant in possession of the mortgaged premises, whether in possession under a lease made prior or subsequent thereto, to pay the rent then and from thenceforth to become due for the same, to him, and upon nonpayment thereof, the mortgagee may distrain upon such tenant. A mortgagor, as against the mortgagee, cannot make a valid subsequent lease; but the mortgagee may either annul such lease, or confirm the tenancy; and any act of the mortgagee, demonstrating an approbation of the demise, such as the receipt of or *distrain* for rent, or the like, will be evidence of confirmation. Coote on Mortgages, 347.

L. W.

EXECUTORS.—PAYMENT OF DEBTS. P. 35.

Where a testator charges his personal estate with the payment of his just debts, such charge will not revive a debt upon which the Statute of Limitations has taken effect by the expiration of the time before the testator's death; but if the debt be *not* actually barred at the period of the death of the testator, it will prevent and stop the operation of the Statute, and such debt is recoverable against his executors after the lapse of six years from the accruing thereof. *Jones v. Scott*, 1 Russ. & Mylne, 255. *Vide also Burke v. Jones*, 2 Ves. & Bea. 275.

E. G.

Common Law.

STATUTE OF LIMITATIONS, P. 35.

If the advertisement be to the effect "that if the creditors will send in their accounts to A. B. of the monies for which he is indebted to them, he will discharge them forthwith," such advertisement will amount to an acknowledgment of his (A. B.'s) respective debts, and take them out of the Statute of Limitations. *Andrews v. Brown*, Pre. in Ch. 386.—But otherwise, if the advertisement be at all qualified in its terms,—as in the case of *Jones v. Scott*, 1 Russ. & Mylne, 255, it will *not* revive debts barred by the statute.

E. G.

QUERIES.

Common Law.

JOINT NOTE.—SUBSEQUENT SECURITY.

A. borrowed of B. 100*l.*, and gave him, as security, a promissory note payable on demand, in which four persons joined him. The promissory note was given in March, 1831. In May following, A., without advising or consulting the parties to the note, or any of them, borrowed of B. a further sum of 60*l.*, for which and the 100*l.* before mentioned, he gave a warrant of attorney to secure the payment of both sums, *viz.* 160*l.* and interest, but did not receive back the promissory note for 100*l.* A. subsequently paid a certain sum as interest

on the warrant of attorney, and in Hilary term, 1832, B. entered up judgment for the principal and interest due thereon, which, together with costs, amounted to 170*l.* 10*s.* A.'s effects, when sold, produced the sum of 182*l.*, from which was deducted taxes, &c., amounting to 42*l.*, and the balance of 140*l.* was paid over to B., who thereby realized 40*l.* beyond the liabilities of the parties to the promissory note. A. hath subsequently taken the benefit of the Act for the Relief of Insolvent Debtors, and consequently discharged himself from the promissory note, as also the warrant of attorney. An action hath since been brought by B. against the four persons who joined A. in the promissory note, to recover the amount thereof, *viz.* 100*l.* Are the parties liable to pay on the promissory note, A. having given a warrant of attorney subsequent thereto, in which the amount of the note was included, and under which B. realized beyond the sum specified therein; the warrant of attorney also being given entirely without the knowledge of the parties to the note?

H. D.

BANKRUPTCY.—TROVER.

A. B. ordered some barley, but finding his affairs embarrassed, returned it again (it not having been paid for); after which a fiat in bankruptcy was issued against him. Will trover lie against the vendors, for the value of the barley so given up to them?

J. J.

BANKRUPTCY.—MORTGAGES.

Can a creditor by mortgage be a petitioning creditor, upon which a fiat in bankruptcy may be proceeded on, without delivering up his security?

J. J.

Late of Property and Conveyancing.

VALIDITY OF DEEDS.

Is a deed good, if it be executed and bear date on Sunday, Christmas day, or Good Friday?

INQUIRENDO.

DEVISE.—CONTINGENCY.

Testator devised as follows: Now my will is, and I give and devise my said estate unto my son J. T., and H. his wife, during the term of *their natural lives*; and after their decease, unto *their son*, in case any such son should be born (which said son shall take my name); but in default of such *male issue*, I give and devise my said estate unto the daughters of my son J. T. by H. his wife, to have and to hold the same in common, and not as joint tenants. The testator left the son and H. his wife (who was then *en ventre*) him surviving, and who was soon after delivered of a son, who is now living and of age. The testator's son is dead, leaving his widow the present tenant for life. What estate does the son of the tenant for life take in the premises after the decease of his mother?

J. J.

DEVISE.—REVERSION.

A. B. by his will devises certain hereditaments to *C. D.* for life, and gives the reversion of the same, without any words of inheritance, to *E. F.* (who was not his heir). What estate passes to *E. F.*? J. J.

DEVISE.—PURCHASER.

A. B. by his will, after directing the payment of all his debts, devised his real and personal estates to trustees, upon trust to permit his wife to take the rents and profits thereof for life; and after her decease, in trust to sell the same, and divide the money equally amongst testator's children. The testator has left several children, and the widow is dead. Can a purchaser safely complete his contract, without being compellable to see to the application of his purchase money? J. J.

MISCELLANEA.

LORD KENYON'S PARSIMONY.

We have somewhat modified a description of Lord Kenyon's parsimony, in the last Number of *Fraser's Magazine*. Even as here set forth, we do not concur in the ridicule of his lordship's rigid economy: it was accompanied by many redeeming qualities, which in these times the scoffer must learn to imitate.

"His dress was the threadbare remains of what might once have been appropriate costume, the sable relics of which frugality had preserved. These rare habiliments irresistibly produced a smile at their singularity, from the sterling marks which they bore of studied parsimony and economy. They were the daily subjects of joke or comment at the Bar, when the Lord Chief Justice appeared and took his seat on the bench. I happened to be in conversation with Lord (then Mr.) Erskine at Guildhall, before Lord Kenyon arrived there. When he entered the court, Pope's lines in the *Dunciad*, on Settle the poet, came across me, and I quoted them involuntarily—

"Known by the band and suit which Settle wore—

His only suit for twice three years before."

"The period of six years," said Erskine, laughing, "during which that poet had preserved his full-trimmed suit in bloom, seemed to Pope to be the maximum of economy; but it bears no proportion to Kenyon's. I remember the green coat which he now has on for at least a dozen years." He did not exaggerate

its claims to antiquity. When I last saw the learned lord, he had been Lord Chief Justice for nearly fourteen years, and his coat seemed to be coeval with his appointment to the office. It must have been originally black; but time had mellowed it down to the appearance of a sober green, which was what Erskine meant by his allusion to its colour.

"I have seen him sit at Guildhall, in the month of July, in a pair of black leather breeches; and the exhibition of shoes frequently soled afforded equal proof of the attention which he paid to economy in every article of his dress. His gown was *silk*, but had a better title to that of *everlasting*, from its unchanged length of service.

"His equipage was in perfect keeping with his personal appearance, and was such as to draw down the gibes of malevolence, the sneer of ill nature, and the regret of those who held him in respect, while it provoked the ridicule even of them. The carriage which conveyed the Lord Chief Justice and his suite to Westminster Hall, had all the appearance and splendour of one of those hackney coaches which are seen on the stand, with a coronet and supporters, the cast-off carriage of a peer or foreign ambassador. Though the seats were occupied by the Lord Chief Justice himself and his officers, in bags and swords, the eye was involuntarily directed to the panel to look for the number of the coach, as its appearance, and that of the horses which drew it, confirmed the impression that it had been called off the stand. They moved with the most temperate gravity, and seemed to require the frequent infliction of the whip to make them move at all.

"That necessary instrument to rouse their latent spirit, was consigned to the unsparing hand of a coachman whose figure and appearance perfectly harmonised with the rest of the appointment. There is an appropriate dress for the different descriptions of servants; and a triangular hat is generally considered part of the costume of a coachman. Whether it was a sacrifice which Lord Kenyon made to fashion, or the vanity of the individual himself which prompted him to adopt it, I will not presume to say, but it seemed to both to be necessary that his lordship's coachman should appear with that important symbol of his station. He therefore adopted the appropriate mark of distinction, a three-cornered hat. This appeared to have been effected with great taste, but with the accustomed view to economy. A hat slouched down before, the former ornament of his head, was, by a neat metamorphosis, changed into a cocked one, by turning up the flap, and making it the base of the triangle; and, lest it should prove refractory under its new regime, it was kept in its place, and the perpendicular procured, by the aid of a pin.

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No. CX.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE PROGRESS OF CHURCH REFORM, AND THE ALTERATIONS MADE IN THE LAW RELATIVE TO THE CHURCH IN THE SESSION 1831—1832.

It is now time that we should again pursue an enquiry into which we have from time to time^a entered—we mean, the progress of Church Reform; and it is our present purpose to see what was done respecting it in the last session of Parliament. This is the more important, as the feeling in favour of a change, which we before described as strong, is now nearly universal; and as, if there be any truth in report, a Reform in the Church will be one of the first measures to be brought forward by the present Government,—the Bill for this purpose, according to this authority, being actually prepared. This measure will no doubt supersede the Bills brought in by the Archbishop of Canterbury, relating to Compositions for Tithes, and Pluralities, of which we shall probably hear no more. But it is to the past, and not to the future, that we at present intend to address ourselves.

The great act of the last sessions relating to the Church of England, is the 2 & 3 W. 4. c. 100, entitled, "An Act for shortening the Time required in claims of *Modus Decimandi*, or Exemption from or Discharge of Tithes," which we lately gave

nearly verbatim^b. The best statement of the former law on this subject is given in the Third Report of the Real Property Commissioners.^c It is sufficient for our present purpose to state, that before the Act a *modus*, to be valid, must be deemed to have subsisted from the reign of Richard the First, and that if it could be proved to have commenced after that period, it would fail. Thus in *Lord Kensington v. Pugh*, 1 Yo. 125, a *modus* was set aside which had certainly subsisted ever since the reign of Edward the Second. And see 3 Yo. & Jer. 548; 2 Jac. & W. 464; 1 M'Clel. & Yo. 362. As to entire exemption from tithes, nonpayment of them for any period, however long, was no ground of exemption. These rules have been altered in the manner mentioned in a former page.^d

The only other act relating to the Church of England, is the 2 & 3. W. 4. c. 80, entitled, "An act to authorize the Identifying of Lands and other Possessions of certain Ecclesiastical and Collegiate Corporations," by which it is enacted that any ecclesiastical or collegiate corporation may enter into an agreement of reference or deed of submission with their lessees or tenants, or with the owners of the adjoining lands, to refer any unknown or disputed boundaries or quantities of land or tithes, to a *commissioner*, who may make surveys, maps, & measurements, summon and examine witnesses, and make an award,

^b 4 L. O. 323.

^c Printed in the Monthly Record for August, 1832.

^d See *ante*, p. 2.

which, when approved by the parties, shall be final.

The march of Church Reform, however, has been more rapid in Ireland, although we think it will soon proceed even more quickly. By 2 W. 4, c. 41, the Lord Lieutenant is empowered to advance 60,000*l.* for the relief of the clergy of the established church in Ireland, who have been in many parts of that country entirely deprived of their tithes. Where an application for relief is made under this act, if the applicant is declared to be entitled to relief, his right to tithes for the year last past shall cease, and be vested in the Crown. On an application being made, proclamation shall be issued in the proper parish, enjoining payment from the persons bound to pay the tithes, and warning them that if they are not paid, proceedings will be taken to compel their payment, and if they are not then paid they will of course be recovered. This act furnishes a distinct precedent for vesting the whole property of the Church in the hands of Government—a measure which has been frequently advocated of late.

Another important Act relating to Church Reform, is the 2 & 3 W. 4, c. 119, which relates to the establishment of a permanent composition for tithes in Ireland. By three Acts passed in the reign of the late King (4 G. 4, c. 99; 5 G. 4, c. 63; and 7 & 8 G. 4, c. 60.) it was enacted, that composition for tithes in Ireland might be made in those parishes wherein the parishioners, together with the ecclesiastical incumbents or other persons entitled to tithes therein, should mutually agree and consent to establish such compositions; and it is recited by this act, that a final composition with a view to future commutation thereof, should be established throughout Ireland. To effect this object it is enacted (§ 1), that all future compositions shall be calculated on the average of seven years preceding the 1st of November, 1830. By § 2, so much of the recited acts as requires the consent of any archbishop, bishop, patron, or sequestrator, to the appointment of a composition commissioner, is repealed: and in all parishes where a composition under the former acts shall not have been made within three months after the passing of this act, the lord lieutenant may appoint a commissioner, who shall fix the amount of composition, and have the same powers as commissioners under the recited acts (§ 3).

These are the only acts^e which were

^e 2 W. 4. c. 7, which dispenses with the sa-

passed in the last session of Parliament, relating in strictness to Church Reform. The new Statute of Limitations to the Rights of the Church is of importance and utility, and is a great improvement in our law; and the acts relating to Ireland are also useful measures; but we expect that a plan of Reform in the Church much more sweeping and effectual will be demanded, and obtained.

There are also two other acts which were passed in the last session of Parliament, which, as they more or less relate to the ecclesiastical polity of the country, we may here conveniently notice.

The first of these is the 2 & 3 W. 4; c. 93. The defective state of the process of the Ecclesiastical Courts has been repeatedly complained of; and this will be easily admitted when it is mentioned, that it was inoperative and unavailable, either against persons having privilege of parliament, or peers. The process of the Ecclesiastical Courts of England and Ireland, also, could only be of force and operation in the respective countries of these Courts, and not in the other country. To remedy these defects, it is enacted by the above Act, that when persons residing beyond the jurisdiction of any Ecclesiastical Court, either of England or Ireland, are cited to appear, and refuse obedience, the Judge thereof may pronounce them contumacious, and certify the same to the Lord Chancellor, either of England or Ireland, as the case may be, within ten days, and thereupon a writ of *de contumace capiendo* shall issue, unless the person be a peer, or has privilege of parliament; and all regulations and provisions made by the 53 G. 3, c. 127, as to the writ *de excommunicato capiendo*, and the proceedings thereupon, shall be applied to the writ *de contumacio capiendo*; and upon the appearance or submission of the party, the Judge may order him to be absolved and discharged. Under this section, therefore, the bodies of all persons, not being peers, &c., may be taken.

But it is also provided, that where persons, whether they have privilege of Parliament or otherwise, have been ordered by any order or decree, to pay any sum of money by an Ecclesiastical Court, either of England or Ireland, shall neglect to pay such money, and are possessed of real or personal estate either in England or Ireland, the Judges may pronounce such per-

cramental test, as well in protestants of the church of Ireland as in protestant dissenters, can hardly be called an exception.

son contumacious, and certify the same to the Lord Chancellor, as the case may be, and he shall cause process of sequestration to issue against such real or personal estate, and enforce obedience to the order or decree of the Ecclesiastical Court, in the same manner as if it had been an order or decree of the Ecclesiastical Court, and deal with it accordingly.

By § 4, the provisions of this Act are not to extend to any order or decree which shall have been made *more than six years* before the passing of the Act. It has been said that this clause (and indeed the whole Act) was introduced to enforce certain orders of the Ecclesiastical Court against a noble Marquess, who had long set them at defiance. This section is a curious instance of *ex post facto* justice.

It is provided by § 5, that any action or suit brought or commenced for any thing done in pursuance of this act, shall be commenced within three months after the fact committed, and not afterwards.

The other act relates to the Court of Delegates. The Court of Delegates has long been considered as very defective. Its faults were pointed out in striking terms by the Lord Chancellor, in his celebrated speech on the Reform of the Laws; and very soon after his acceptance of the Great Seal, he recommended the subject to the attention of the Ecclesiastical Commissioners, who had then just been appointed; and on the 5th of June, 1831, they published a special Report on the subject;^f and they afterwards followed up the subject in their General Report of the 15th of Feb. 1832.^g Their recommendation was to transfer the jurisdiction of this Court to the Privy Council; and it has been carried into effect by the 2 & 3 W. 4, c. 92, by which the acts for establishing the former Court (25 H. 8, c. 19; and 8 Eliz. c. 5), so far as they relate thereto, are repealed, from the 1st of Feb. 1833 (ss. 1 & 2); and from that time the powers of the Court of Delegates are to be transferred to the Privy Council, which shall have full powers to hear and determine all matters which might theretofore have been heard by the former Court (§ 3). By § 4, it is provided, that nothing in the Act shall affect any appeal now pending, or which may be pending before the said 1st day of February; and that the judgment of the Court of Delegates in any such case shall be good and valid.

It is proposed also, we understand, if possible, in the early part of the next session of Parliament, to bring in an act for the purpose of re-modelling and improving the Privy Council. If this be not done, little benefit will arise from the transfer of the business to this Court, at present remarkably defective.

REVIEW.

The Law of Fire and Life Assurance and Annuities, with Practical Observations. Part 1. The Law of Fire Insurance. Part 2. The Law of Life Insurance. Part 3. The Law of Annuities. By Charles Ellis, of Lincoln's Inn, Esq., Barrister at Law. Saunders and Benning, 1832.

THE object of this work is to furnish a separate treatise on the subject of Fire and Life Insurances, which the author properly states to be of growing importance. It also contains some observations on Annuities, which do not, however, contain much novelty. The other two parts appear to us to be executed with care and ability, although the cases might have been given less diffusely. The first chapter of part 1 is devoted to the Nature of the Contract; the second, to the Interest of the Insured; the third, to the Nature of the Insurer's Risk; the fourth, to the Proofs of Loss; the sixth, to the Assignment of Policies; the eighth, to the Equities attaching upon Policies; the ninth, to the Proceedings on Policies of Insurance; the tenth, to the Recovery back of Losses improperly paid.

In part 2, *The Law of Life Insurance*, the chapters are as follow:—Chapter 1, Of the Nature of the Contract. Chapter 2, Of the Warranty of the Age and Health of the Party to be insured, and of Misrepresentation and Concealment. Chapter 3, Of the Interest in the Life insured. Chapter 4, Of the Risk and its Duration. Chapter 5, Of Assignments of Policies of Insurance upon Lives. Chapter 6, Of the Attachment of Equities to Policies of Insurance on Life, in favour of Third Persons. Chapter 7, Of the Agents. Chapter 8, Proceedings in Actions on Policies of Insurance upon Lives. Chapter 9, Of the Application of Life Insurance to forming Endowments and making Provision for Families, and for Security of Debts.

As a fair specimen of the work, we shall give a part of the section on the interest on

^f Printed 1 Monthly Record, 137.

^g Printed 2 Monthly Record, pp. 129, 162, 202, and 229.

the life insured, necessary to support a policy.

"Besides the most obvious and ordinary mode of insurance, that of a person insuring his own life in a sum payable to his personal representatives, much of the business of the offices consists of nominee insurances, that is, where a person insures the life of another. As life insurance became more generally extended, it appears that, like many other beneficial practices, it became subject to abuse. Persons were in the habit of insuring the lives of others with whom they had no connection, and in whom they had no interest, merely by way of gambling speculations; and it requires no very great discernment to see that such a practice was pregnant with serious mischief, and held out dangerous temptations, on the one hand, to unprincipled speculators, and imminent danger to the unfortunate persons who might happen to be selected by them as subjects of insurance. The legislature became so convinced of the evil, that the practice of life insurance has since been regulated by act of parliament, whereby these insurances without interest are considered void."

The stat. 14 Geo. 3, c. 48, s. 1, is then inserted.

"Very few questions have arisen upon the subject of interest, because the offices are never in the habit of taking that objection, unless they are under the necessity of resisting payment upon some other fair and proper ground, as fraudulent misrepresentations or concealment; and if they are driven to resist on such a ground, they then, in order to make their case the stronger, sometimes also object to the want of interest when the policy is open to the objection. The offices are constantly in the habit of taking insurances where the interest is upon a contingency, which may very shortly be determined; and if the parties choose to continue the policy *bond fide* after the interest ceases, they never meet with any difficulty in recovering: so also they frequently grant policies upon interest of so slender and precarious a kind, that although it may be difficult to deny some kind of interest, it is such as a court of law would scarcely recognize. This practice of the offices of paying upon policies without raising questions as to interest, is so general, that it has been even recognized in courts of law. As where a person bought a policy of insurance of another, after the interest had expired or was on the point of expiring, and some years after the sale and assignment, the executor of the purchaser, understanding that the office was not in law bound to pay upon the policy, brought an action against the seller to recover back the purchase-money. But Lord Tenterden, C. J. told the jury the only point for their consideration was, whether at the time of the sale there was any misrepresentation or concealment to vitiate the policy. It was true in point of law, that the insurance ceased with the interest; but then they had it in evidence that

the insurers never availed themselves of their objection. Verdict for defendant. *Barber v. Morris*, 2 Moo. and Mal. 62.

"A *bond fide* creditor has undoubtedly an interest in the life of his debtor, at least where he has only the personal security of the debtor, and this interest is insurable within the statute.

"An insurance was effected on the life of Lord Newhaven, from the first of December, 1792, to the 1st of December, 1793. In an action on the policy, the only question was as to the plaintiff's interest in the life insured, which it was contended was not sufficient to take this case out of the above statute. It appeared that Lord Newhaven was indebted to the plaintiff and a Mr. Mitchell in a large sum of money, part of which debt had been assigned by them to another person; the remainder being more than the amount of the sum insured, was, upon a settlement of accounts between the plaintiff and Mitchell, agreed by them to remain to the account of Mitchell only. Lord Kenyon was of opinion that this debt was a sufficient interest. He said, 'It was singular that this question had never been directly decided before; that a creditor had certainly an interest in the life of his debtor; because the means by which he was to be satisfied might materially depend upon it, and that at all events the death must in all cases in some degree lessen the security. The jury found a verdict for the plaintiff. *Anderson v. Edie*, 2 Park, 640. It may be observed that this note is very short, and not very satisfactory; because if the plaintiff had in fact assigned over his interest in the debt to Mitchell before the death of the assured, it is difficult to see how any insurable interest within the statute remained in him, unless we assume that the debt still remained legally due, and recoverable by the plaintiff Lord Newhaven, the latter having no notice of the assignment of the debt; in such settlement of accounts, or upon the principle of *Tidswell v. Angerstein*, Peake, 151, we consider the plaintiff to be in the situation of a trustee. If a debt is amply secured by mortgage or otherwise, it would be very difficult to establish such an interest as would entitle the party insuring to recover, because the above act declares that 'no greater sum shall be recovered from the insurer than the amount or value of the interest of the insured in the life insured.' Perhaps a case of this kind is not likely to occur in practice, as it is not usual to insure by way of collateral security, except when the principal security is doubtful.

"Although a creditor may insure the life of the debtor, yet if after the death of the debtor, whose life is insured, and before any action be brought on the policy, the debt be paid, the creditor is not entitled to recover. *Godsal v. Boldero*, 9 East, 72, is cited at length.

"The holder of a note given for money *non at play*, has not an insurable interest in the life of the maker of the note. The insurable interest of a creditor in the life of his debtor must be upon a good consideration. An action brought on a policy on the life of J. R., who

was warranted in good health: by a memorandum at the foot of the policy it was declared, that it was intended to cover the sum of 5000*l.* due from Russell to the plaintiff, for which he had given his note. Two objections were made on the part of the defendants. 1st. That part of the consideration for the note was for money won at play. 2d. That Russell at the time he gave the note was an infant. Mr. Justice *Buller* nonsuited the plaintiff, upon the ground of part of the consideration of the note being for a gaming transaction, and therefore there was a want of interest in the plaintiff. *Dwyer v. Edie*, 2 Park, 63.

“A trustee may insure for the benefit of the *cestui que* trust. An insurance was made on the life of *H.* for a year, and during the life of the plaintiff, *H.* had granted an annuity to the plaintiff's late brother, which annuity he had bequeathed to persons not parties to the insurance, having made the plaintiff executor of his will, and directed him to make insurance. In an action on this policy brought by the executor, it was objected, that as the annuity was not devised to him by the grantee, he had no insurable interest in the life of Holden the grantor. But Lord *Kenyon* thought this a sufficient interest in the executor to support the action. *Tidswell v. Angerstein*, Peake, N. P. C. 151. In the case of an annuity, if the premiums are to be paid by the grantee, a contract for the grantor to make insurance will not be usurious, although the annuity be higher in proportion. A defendant by deed covenanted to pay an annuity of 100*l.* for four lives, and in thirty days after the dropping of three of the lives, to insure the life of the fourth for the benefit of the plaintiff, who in consideration gave 1000*l.* to the defendant; there was a covenant for redemption. It was argued upon demurrer, whether this transaction was usurious. The Chief Baron (Lord *Lyndhurst*) said, ‘That if the expense of insurance was payable by the grantee of the annuity, it would not be usurious, although the annuity was higher in proportion. The statute of usury imposed a penalty when more than 5 per cent. was charged on a loan. This was not a loan, for it was not intended to be returned to the borrower. If the principal was at hazard, it could not be deemed a loan; as between lender and borrower it clearly was at hazard, for the borrower was not bound to return it. If the principal was to be returned by a third person, still it was the same thing between the contracting parties. There was a hazard even according to the contract, for the fourth life might not be insured until thirty days after the expiration of the third. If the fourth life dropped before the expiration of the thirty days, the principal was forfeited.’ The other barons concurred in opinion, and judgment was given for the plaintiffs. *Holland v. Pelham*, M.S.”

We have now given our readers ample means of judging of the merits of the work themselves.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1831—1832.

No. VI.

EXCISE PERMITS. 2 W. 4, c. 16.

ALTHOUGH we principally notice the changes in the Law which affect the administration of Justice, it is material not to pass by, without some comment, the other alterations in the *lex scripta*, which are of a general nature. Amongst the statutes of this class, is one which relates to *Excise Permits*. It is entitled, “An Act to consolidate and amend the Laws regulating the granting and issuing of Permits for the Removal of Goods under the Laws of Excise.” It passed on the 24th of March, 1832, and came into operation on the 5th of April following.

The former Acts on this subject,—namely, the 23 G. 3, c. 70, which related to England, and the 59 G. 3, c. 107, which related to Ireland,—were different in their several provisions, and consequently required different permits for each country. The present Act was therefore passed to consolidate and assimilate the enactments of both Statutes. The penalties contained in the previous Law are altered, and in general are less severe.

After repealing several sections, both of the 23 G. 3, c. 70, and 59 G. 3, c. 107, the new Act proceeds to regulate the mode of obtaining and using permits, both in England and Ireland.

The request-note for the permit is to contain the date, the name of the place¹ from which, and to which the commodities are to be carried; the mode of conveyance, the real name, surname, and place of abode of the person sending, and the person to whom they are sent. It is to be *signed* by the person requiring it, or by his known clerk or servant. No *stamp* duty is requisite. The time of removal must be specified. Then follow the penalties of forfeiture, &c. for non-compliance.

Private persons may also obtain permits to remove exciseable commodities on *signing a declaration* that the duties have been paid.

No *oath* is required, either by traders or private persons, to enable them to obtain the permit. This is an improvement long called for by the public.

ADDENDA TO NOTES ON THE NEW RULES UNDER THE UNIFORMITY OF PROCESS ACT.

IN our Number of November 10th (p. 23), we suggested that on a view of all the provisions of the above Act, it should seem, that the Courts would not award a *distringas* under the third section, in consequence of the plaintiff being unable to serve the defendant with a summons, or the defendant not having voluntarily appeared to it, until the expiration of four months, as the summons is in force for that period. The question has not been formally raised before any of the Courts; but it would appear, from their practice since the Act has come into force, that they tacitly admit it to be not necessary so to wait. Whenever any application has been made for a *distringas*, during the present term, the question to which the Judges have directed their attention has been, whether sufficient efforts had been made to serve the defendant, and not whether sufficient time had elapsed previous to the application. With all deference, we think that if the point were to become the subject of discussion before the Judges, they would be of opinion that four months must elapse before the application could be granted. The third section says, that the *distringas* shall be granted when it shall be satisfactorily shewn that the defendant cannot be served, or made appear, "according to the exigency" of the writ. The words between inverted commas, it is conceived, are not to be rejected as surplusage, from the Act. If they are not, then what is the meaning to be attached to them? When does the exigency of the writ begin and end? The language of the writ is, "that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you," &c. Now the exigency of the writ must either last four months, or never begin. If the exigency of an appearance by the defendant does not begin until after service, and the defendant cannot be served, the exigency never can begin. As, however, the words of the third section, as to the exigency of the writ, are not to be rejected as surplusage, it must be admitted that the exigency is contemplated as beginning and enduring, although no service of the process has been effected. Then if it begins and endures, when does it begin, and how long does it endure? As no precise time for its begin-

ning is mentioned in the Act, it must of course be held to begin as soon as the writ is issued; and as, by § 10, it may be in force for four months, it must be held to endure for four months. If so, the *distringas* cannot be granted until the expiration of that period, for until then it cannot be known, that the defendant cannot be served or made appear, according to the exigency of the writ, "without some more efficacious process."

PRACTICAL POINTS OF GENERAL INTEREST.

No. XXXV.

CLAUSE TO DEFEAT BANKRUPT LAWS.

IT is clear, that by framing a settlement properly, a third party may settle property on a man, on his marriage, so as to exempt it from the operation of the Bankrupt Laws; but clauses having this object will always be viewed with jealousy. It will be seen that the clause in the following case was held to be ineffectual for this purpose.

Testator bequeathed to trustees a sum of 23,333*l.* 6*s.* 8*d.* three per cent. consols. upon trust for his wife for life; and after her decease, upon trust for his sons and daughters, in equal shares, for their respective lives; and immediately after the decease of his son and daughters respectively, he directed that one third part of the stock should be paid unto all the children: and this clause followed—"Provided always nevertheless, and my will and mind is, that the several provisions hereinbefore and hereinafter given for my said son and daughters during their respective lives, shall not nor shall any part thereof respectively be subject to any alienation or disposition by sale, mortgage, or otherwise, in any manner whatsoever, or by anticipation of the receipt; and in case they or any or either of them shall charge or attempt to charge, affect, or encumber the same, or any part or parts thereof respectively, then I do declare it to be my express will and meaning, that any such mortgage, sale, or other disposition or incumbrance, so to be made by them or either or any of them on his, her, or their life annuity, interest, or provision, shall operate as a complete forfeiture thereof, and of all benefit therein, during the remainder of their respective natural lives; and the same shall devolve upon the next successor, or person or persons in expectancy, as if he, she or they, were then actually dead." The testator died in the year 1806, and his widow died in 1821, leaving A. G., the son, then of age. In the month of

March, 1828, *A. G.* became a bankrupt. The only question was, whether under the proviso in the will, the bankruptcy operated as a forfeiture of the bankrupt's life interest in his share of the dividends, for the benefit of his children: or whether that interest passed under the commission? The Vice-Chancellor having decided that the bankrupt's interest in the legacy passed to his assignees, an appeal was brought from his Honor's decree. The Lord Chancellor said, that here the clause of forfeiture applied only to the prohibition against the acts of the parties themselves: "in case any or either of them shall charge or attempt to charge, affect, or encumber the same," then the property was to go over. The prohibition in *Domett v. Bedford*, 6 T. R. 684, 3 Ves. 149, was expressed in much more general and comprehensive terms, and might well be construed to extend to alienation by act of law; yet even there the point had been considered doubtful. The same distinction which the Master of the Rolls had stated in *Shee v. Hale*, 3 Ves. 404, had been subsequently much discussed, and was approved in *Wilkinson v. Wilkinson*, G. Coop. 259. 3 Swan. 525. The decree of the Vice-Chancellor must therefore be affirmed. *Lear v. Leggett*, 1 Russ. and M. 690; S. C. 2 Sim. 479. See also *Cooper v. Wyatt*, 5 Mad. 482; and see the proper clauses for providing against bankruptcy, &c. 1 Stewart's Convey. 299. 2d. edit.; and 2 ib. 219.

REMARKABLE TRIALS.

No. XVII.

MRS. ARDEN'S CASE FOR MURDER, IN 1551.

Thomas Arden was a private gentleman, living at Feversham, in the County of Kent: the circumstance of his murder, the detection of it, and the punishment of the offenders, were exceedingly remarkable. He was a tall and comely person, and married a gentlewoman who was young, well-shaped, and every way handsome: who having unhappily contracted an unlawful familiarity with one Mosbie, a black swarthy fellow, servant to Lord North, it happened by some means or other that they fell out, and so continued at variance for some time: but she being desirous of a reconciliation, and to use her former familiarity with him, sent him a pair of silver dice by the hands of one Adam Fowle, living at the Flower de Luce, in Feversham, for a present. This brought them together again, so that Mosbie lay often in Arden's house, and in a short time the intercourse between them was so open, that Mr. Arden could not but perceive it; although common report says that he winked at it, for fear of disobliging her relations, from whom he had some great expectations. Having continued their lewd practices for a considerable time, the woman doated more and more upon Mosbie, and began to loath her husband ex-

tremely; insomuch that she would have been glad to have found out a way to get rid of him. There was a painter at Feversham, who was reported to be versed in the art of poisoning; to him she applied herself, and asked him, "Whether he had any skill in that or not?" The man seeming to own it; she told him, "She would have such a dose prepared as would make a quick dispatch." "That I can do," said he; and so he presently went to work, gave it her, with directions to put it into the bottom of a porringer, and so to pour milk upon it: but the woman, forgetting the direction, put in the milk first, and then the poison. Now her husband designing that day to take his horse and ride to Canterbury, his wife brought him his breakfast, which was usually milk and butter. Having taken a spoonful or two of the milk, and liking neither the taste or colour of it, he said, "Mrs. Alice, what sort of milk is it you gave me?" Upon which she threw down the dish, and said, "I find nothing can please you:" upon which he went away for Canterbury, and by the way vomited extremely, so that he escaped for that time.

Subsequently, a desperado of the name of "Black Will," was employed by the guilty parties, on a promise of a reward of money to murder Mr. Arden. He made several attempts during various journies of the unfortunate gentleman, but without success. At length it was determined to perpetrate the deed of blood in Mr. Arden's house, where Black Will was secreted. Mosbie and Mr. Arden were playing a game at tables, when the former said, "Now, Sir, I can take you if I please."—"Take me," said Arden, "which way?" With that Black Will rushed out of the closet, and threw a towel about his neck, to stop his breath and strangle him; then Mosbie having a pressing-iron, weighing fourteen pounds, at his girdle, struck him so on the head with it, that he knocked him down, upon which he gave a loud groan, which made them believe he was killed. From the parlour they carried him into the counting-house, where as they were about to lay him down, the pangs of death came upon him, and groaning in a most grievous manner, he extended himself, and Black Will giving him a terrible gash in the face, slew him outright; then he laid him along, took his money out of his pocket, and the rings off his fingers, and coming out of the counting-house, said, "The business is over, give me my money;" upon which Mrs. Arden gave him ten pounds. After Black Will was gone, Mrs. Arden went into the counting-house, and with a knife stuck the corpse seven or eight times in the breast; then they cleaned the parlour, wiped away the blood with a cloth, and strewed the rushes which had been disordered during the struggle. The cloth and the bloody knife wherewith she had wounded her husband, they threw into a tub by the well's side, where they were afterwards both found.

The dead body was afterwards carried into a field adjoining to the church-yard, and to his own garden-wall, through which he went to church. In the mean time it began to snow,

and when they came to the garden door, they had forgot the key, so that one of them was sent to fetch it; it was brought at last, and the door being unlocked, they conveyed the corpse into the field, about ten paces from the door of that garden, and laid it down on its back, in its night gown and slippers, between one of which and the foot stuck a long rush or two.

Having, by this management, effectually secured themselves, as they imagined, from all manner of discovery, they returned the same way into the house; the doors were opened, and the servants, which had been sent into the town, being come back, it was, by this time, grown very late: however the wicked woman sent her people out again in search for their master, directing them to go to such places where he mostly frequented, but they could hear no manner of tidings of him: then she began to exclaim, and wept like a crocodile: this brought some of her neighbours in, who found her very sorrowful, and lamenting her case, that she could not find out what was become of her husband. At last, the mayor of the town and others went upon the search for him. Here we are to observe, that the fair was wont to be kept partly in the town, and partly in the abbey, but Arden procured it to be wholly kept in the abbey-ground, of which he had made a purchase; and, by this means, being like to have all the benefit of it, to the prejudice of the town and inhabitants, he was bitterly cursed for it. After they had searched other places up and down, they came at length to the ground where the dead body was laid; where one of them happening to spy it first, called to the rest of the company, who, narrowly viewing the same, found it to be the corpse of Arden, and how it was wounded: they found the rushes sticking in his slippers, and found some footsteps of people in the snow, between the place where he lay and the garden door. This causing suspicion, the mayor ordered every body to stand still, and then appointed some of the company to go about to the other side of the house and to get in that way, and so through into the garden, towards the place; where, finding the prints of people's feet all along before them in the snow, it appeared very plain that he was conveyed that way, through the garden into the place where they had laid him.

The mayor and the company hereupon went into the house, and being no strangers to the ill-conduct of Mrs. Arden, they very strictly examined her about her husband's murder: she defied them, and said, "I would have you to know I am no such woman:" but they having found some of his hair and blood near the house, in the way he was carried out, as also the bloody knife she had thrust into his body, and the cloth wherewith the murderers had wiped off the blood spilt in the parlour; these things were urged so home, that she confessed the murder, and upon beholding her husband's blood, cried out, "Oh! the blood of God help me, for this blood have I shed." She then discovered her guilty associates.

Mrs. Arden, her daughter, Michael, and the

maid, were seized and sent to prison; then the mayor and the rest that attended him, went to the Flower-de Luce, where they found Mosbie in bed: they soon discovered some blood upon his stockings and purse, and when he asked them what they meant by coming in that manner, they said, "You may easily see the reason;" and, shewing him the blood on his purse and hose, "these are our evidences." He thereupon confessed the horrid fact, and was committed to prison, as well as all the rest of the crew, except Green, Black Will, and the Painter, which last was never heard of after. Some time after, the assizes were held at Feversham, where all the prisoners were arraigned and condemned.

Mrs. Arden was burnt, and the others hanged, some of them in chains.

INELIGIBILITY OF QUAKERS TO SIT IN PARLIAMENT.

THE novelty of a Quaker's being put in nomination for a member of parliament has raised the question, whether or not, if elected, he can take his seat? As it is not disputed but that every subject of the realm is eligible, of common right, it seems necessary, in order fully to comprehend the point, briefly to refer, not only to the statutes imposing obligations on the individuals elected, but also to those enactments affecting the Quakers as a body.

According to Lord Coke, 4 Inst. 414, it appears, that as every Court of Justice hath laws and customs for its direction; so the High Court of Parliament stands upon its own peculiar laws and customs, by which, to the exclusion of the Common Law Courts, all matters concerning its members are to be determined and discussed, and not in any inferior Courts. By the 30 Car. 2. st. 2, 1 G. 1. c. 13, and 6 G. 3. c. 53, a member shall not vote or sit till he hath, in the *presence of the House*, taken the oaths of allegiance, supremacy, and abjuration, and subscribed and repeated the declaration against transubstantiation. As, therefore, the operation of these statutes affects every individual, they necessarily exclude Quakers, acting upon their own peculiar principles respecting the propriety of an oath. This brings me to the consideration of those in which regard is specially had to them.

The 1 W. & M. ses. 1. c. 18. § 13, contains a recital, that "there were certain persons, dissenters from the Church of England, who scrupled the taking of any oath," and provides, that every such person should subscribe certain declarations and professions therein specified, which subscription should be entered of record at the quarter sessions; and that every such person making and subscribing such declaration and profession, should be exempted from the pains and penalties of certain

statutes therein mentioned: and the 14th section authorizes justices of the peace to tender such declarations. The 19th sec. of the 7 & 8 W. 3. c. 27, provides, that no person who should refuse to subscribe such declarations (which the sheriff or other officer taking the poll was thereby empowered to administer), should be admitted to give any vote for the election of a member *to serve in parliament*. By the 1st sec. of the 7 & 8 W. 3. c. 34, every Quaker who should be required, *upon any lawful occasion*, to take an oath, in any case where by law an oath was required, should, instead of the usual form, make the solemn affirmation or declaration therein contained; and which, by the 2d section, is declared to be of the same effect, to all intents, in all *Courts of Justice and other places*, where by law an oath is required, as if such Quaker had taken an oath in the usual form; and any false affirmation is subjected to the punishment of perjury: by the 6th, that no Quaker should be thereby qualified to give evidence in any criminal cases, *to serve* on any jury, and bear any office or place of profit in the government. By the 13th sec. of the 6 Anne, c. 23, a Quaker refusing to declare the effect of the abjuration oath therein prescribed, as directed by the last mentioned statute (which declaration the sheriff taking the poll was thereby authorized to administer), should not be capable of giving any vote for the election of a member of parliament *to serve* in the House of Commons. By the 6 G. 1. st. 2. § 3, reciting that several disputes had arisen concerning such abjuration oath, it was enacted, that in all cases where its effect might be legally tendered or required of a Quaker, he should make the affirmation therein prescribed. By the 8th of the same King, c. 6. § 1, the form of the declaration, &c. was altered, and all persons *authorized to administer the former were thereby authorized* to administer the latter, in the form prescribed by that act: by the 2d, that such substituted declaration, &c. when taken, should be adjudged of the same force, in all Courts of Justice *and elsewhere*, as if such Quaker had subscribed the former declaration, &c.; and if any person should be convicted of a false affirmation, he should incur the penalty of perjury. By the 22 G. 2. c. 46, § 36, reciting that a doubt had arisen whether the affirmation prescribed by the last act could be taken where by any act an oath was required, unless expressly directed to be taken in stead thereof, by reason of which *the testimony of Quakers* was frequently refused, whereby they, and others requiring their evidence, were subjected to great inconveniences; for removing which doubts it was thereby enacted, that in all cases wherein, by any act of parliament then in force or thereafter to be made, an oath was or should be required, the solemn affirmation of a Quaker, in the form there prescribed, should be taken instead of such oath, although no particular or express provision be therein made for that purpose; and all such persons who were or should be authorized to administer such oath, were thereby authorized to ad-

minister the said declaration, which, when made, it is enacted, should be of the same force, in all *Courts of Justice and other places*, where by law an oath was or should be required; and any person making a false affirmation was liable to the penalties of perjury: and the 37th sec. provides, that no Quaker should by virtue of that act be qualified or permitted to give evidence in any criminal cases, or to serve on juries, or to bear any office or place of profit in the government. And by the 9 G. 4. c. 32, Quakers are enabled to give evidence in every case, whether criminal or civil, on making a solemn affirmation, which is thereby declared to be of the same force as an oath, in all *Courts of Justice and other places*, where by law an oath is required; and any person making a false affirmation is subjected to the penalties of perjury.

The preceding enactments, it is submitted, so far from supporting the pretensions of the Quakers, clearly shew, that in the first years of the Revolution, the government viewed their body with ungenerous suspicion, although it professed to relieve them, by an exemption from the penalties of prior statutes, by substituting more effectual securities, in the form of declarations. Without entering upon an examination of the advantages they derived from the first statute, it is submitted, that the declarations it required were intended as securities for their loyalty, and that by making justices of peace the functionary to receive them, it neither raised nor supported their present ambition. The second statute was still less gratifying, because it clearly established the fact, that so far from qualifying them for *candidates*, the privilege of voting was *purchased* by a declaration, to be made "to the sheriff or other person taking the poll," to which object it was confined. The recitals in the next, not only shew the evil intended to be remedied, but also shew the sense in which the words "*Courts of Justice and other places*," were used in this and the subsequent statutes; and therefore, the words "*and other places*," considered with reference to the general intention, discoverable from the recital in the 22 G. 2. c. 46, and the rule of construction, that a specific term used in the first instance shall not be extended by a subsequent general term, do not carry the meaning further than Courts of Justice, where testimony was received between party and party. This view of the subject is aided by the following section, relative to the penalties of perjury, and the subsequent one, of disqualification; as it cannot reasonably be contended, that the effect of the same statute, in those times of disquietude, was to waive the solemnity of an oath, and to give Quakers a peculiar title to a seat in Parliament; the highest Court and the Grand Inquest of the country, and at the same time to pronounce them disqualified "to give evidence, to serve on *any* jury, or to bear any office or place of profit in the government." C. S.

DELAYS IN THE MASTERS' OFFICES.

Sir,

THE conclusion to which Mr. R. M. Hume comes, that the delay in the Master's offices arises from the extent of business there, and the consequent want of a sufficient number of Masters to dispose of it, is manifestly erroneous, and must so appear to every professional man acquainted with the practice and course of proceeding in the Masters' offices; so far from the present delay resulting from an overcharged extent of business, I hesitate not to say, it is generally, and in very many instances solely, attributable to the present system of conducting business. In support of this assertion, let me ask any practical man, whether the practice of hourly warrants does not generally leave the Masters in total ignorance of the contents of papers left for their perusal. And then arises continued and unceasing contentions on the construction of such papers, on the evidence to be adduced in support of statements contained in them, and in fact, upon every point bearing upon the particular subject in dispute; hence the lamentable waste of time and money referred to by Mr. Hume. Further let me ask, whether all the Masters are in the habit of attending from ten o'clock until four? I.

[We stated, on reviewing the pamphlet referred to by our Correspondent, that the proposed increase in the number of Masters could not be supported, until an improved method of conducting business should be first tried and found wanting. The plan of continued warrants, pursued for a reasonable time, would show what is capable of being done. Ed.]

SUPERIOR COURTS.

Rolls Court.

INSOLVENT ACT.

A colourable conveyance, or a conveyance made on the mere motion of an insolvent, is a voluntary conveyance, and void.

In 1828, the insolvent being indebted to the plaintiff in the sum of 90*l.* for rent, the plaintiff, on the 6th of December, arrested him, on which he took the benefit of the Act for the Relief of Insolvent Debtors in England. In September before the arrest, the insolvent went to the defendant, near London, when it was agreed that he should convey to him his interest in the property in question for 100*l.* out of which sum an alledged debt of 40*l.* was to be paid to the defendant, and the conveyance was executed. On his return to the country, a sale was made of the farming produce and utensils; and it was in evidence that he then declared that he had made over the property safely enough to the defendant, and that he should go to the Fleet in order to pay off the debt of the plaintiff. The debts of the insolvent amounted to 1,142*l.*, and the assets to 33*l.*; the bill prayed it might be declared that

an indenture, conveying the insolvent's interest in certain freehold and leasehold estates in Somersetshire to the defendant his uncle-in-law, was fraudulent and void, and that the property might be re-conveyed to the plaintiff for the benefit of creditors.

Mr. *Bickersteth* and Mr. *Jacob*, for the plaintiff, who was assignee of the insolvent, submitted that the conveyance having been made voluntarily for inadequate consideration, and within the three months prescribed by 7 Geo. 4, cap. 57, sec. 32, it was brought within the operation of the act, and that the sale ought to be declared fraudulent and void.

Mr. *Beames* and Mr. *Stanton*, for the defendant, contended that there had been no fraudulent concert between the insolvent and the defendant, nor had inadequacy of consideration been proved; but threatening applications had been made, so that the conveyance could not have been voluntary.

Muster of the Rolls.—For the purpose of avoiding this conveyance it must be established that the insolvent was in insolvent circumstances when that conveyance was executed, which did not admit of any question. If the conduct of the insolvent alone were to decide the point, then insolvency must be inferred from the manner in which he dealt with the plaintiff; but the insolvency was established by the proceedings under the Insolvent Debtors' Act. The question on which the Court has to decide is, whether this was a voluntary conveyance within the meaning of that act. The Plaintiff being a creditor for a sum of 90*l.* pressed for payment, whereon a proposition was made by the insolvent for the payment of that debt by instalments. However the first instalment was not paid, and the plaintiff, having become alarmed, demanded that payment should be made, when the insolvent entered into a second engagement, which he did not fulfil. The solicitor of the insolvent stated that he was not able to pay the debt. Afterwards the insolvent came to town, when the conveyance was executed to the defendant *Drewe*, the uncle of the wife of the insolvent; but the title was not investigated, nor did it appear that the particulars of the estate had been furnished to the defendant. It had been said that that conveyance was made in consequence of a previous pressure on the part of the defendant; but it never occurred to the insolvent to convey to the plaintiff, who was a creditor for 90*l.*, and pressed the insolvent more than the defendant had ever done. On the insolvent's return to the country, he got up a sham sale of the fixtures and stock on the farm, which had evidently been done with a view to his taking the benefit of the Insolvent Debtors' Act. It was therefore difficult to question that his journey to London had been taken with the same view. It did not appear that what was a voluntary conveyance under the Insolvent Act, had received a construction from any Court. The conveyance being made to a creditor upon the motion of the insolvent, and not upon any proposal from the creditor, and a threat of arrest by him if the sale were

not made, it could only be considered a voluntary conveyance within the meaning of the act. Were a conveyance made colourably with a view to divest the rights of other creditors, or with a view to give a fraudulent preference to any creditor, it must be considered as voluntary. Under the circumstances of this case, this sale was colourable; if, however, it had been made *bona fide*, and not colourably, it proceeded altogether on the motion of the insolvent, and the conveyance was therefore a voluntary one, within the true meaning of the act; and it must be therefore avoided, and with costs.—*Stuckey v. Druce*, Nov. 8, 1832. M. R.

King's Bench Practice Court.

ATTORNEY'S LIEN.

Trover against an attorney for deeds; cause referred; award, a nonsuit, and each party to pay his own costs;—held, that the attorney had no lien on the deeds for the costs; held, also, that the attorney had no lien on the deeds for expenses incurred by him in consequence of applications made to him for the deeds.

Butt obtained a rule *nisi*, calling on one *Daniel Sharpe*, an attorney of this Court, to give up certain deeds to the parties entitled to the property to which the deeds related.

Campbell shewed cause; and his affidavits stated that an action of *trover* had been brought by some of the parties who obtained this rule against *Sharpe*, for the recovery of the deeds in question. The cause was referred to a barrister, who directed a nonsuit to be entered, and ordered each party to pay his own costs of the reference.

Sharpe, in his affidavit, set up a claim to a lien on the deeds, for the expenses attending the reference, and also for about 5*l.* the costs, to which he had been put, by reason of the numerous applications made to him to deliver up the deeds. On these facts it was contended, that the attorney was not bound to give up the deeds, until he was well satisfied that the claimants had a good title to them; and that, in the present case, he had a right to hold them, at any rate, for the 5*l.*

Follett and *Butt* supported the rule. The attorney cannot retain the deeds on the ground mentioned. A lien can only arise by contract, either expressed or implied. There was no such contract in the present case. As to the expenses said to have been incurred by him, he could maintain no action for them; and, therefore, he can set up no lien for them.

Taunton, J.—I am of opinion, that the attorney has no lien for the sums in question. As to the costs of the reference, that matter was in the discretion of the arbitrator; and he has disposed of it. And, as to the other sum, I can see no pretence for saying, that he has a lien on the deeds for expenses so incurred. It is clear, he could not support an action for those expenses.

Rule absolute.—*In the matter of Sharpe, gent., one, &c.* June 7th, 1832.

DISTRINGAS.—AFFIDAVIT.

In order to get a distringas under the Act of 3 W. 4. c. 39, there must be three attempts to serve, and the summons left, or a positive affidavit that the defendant keeps out of the way to avoid being served.

Harrison, in moving for a *distringas*, under sec. 33 of W. 4. c. 39, produced an affidavit, which stated, that attempts had been made three several times to serve the defendant with the writ of summons, (specifying how the attempts were made, and that one was made by appointment of defendant's clerk,) and the affidavit proceeded to state, in the words of the act, "that the defendant had not, according to the exigency of the suit, appeared to the action, and could not be compelled to do so, without some more efficacious process."

Patteson, J.—I think you should go on to state, that you believe the defendant keeps out of the way to avoid being served, or that a copy of the summons was left for defendant.

[It was stated by counsel, that in the Exchequer it had been held that a copy must be left, as well as that three attempts had been made.]

Patteson, J.—I cannot say that it will be absolutely necessary, in all cases, to serve the summons; but you ought, at least, to state your belief that the defendant keeps out of the way to avoid being served; upon adding that, you may have your rule. K. B. P. C. Friday, Nov. 16. *Coram Patteson*, J.

In the Exchequer of Pleas.

BAIL.—COSTS.

Notice of bail, describing the bail to have resided within the last six months (instead of for the last six months) at a particular place, is bad; but if the affidavit of justification is correct, it may be connected with the notice, so as to make the notice sufficient.

Upon bail coming up to justify by affidavit, —*Butt* objected that the notice of bail was bad. It stated that one of the bail had *within* the last six months resided, &c., instead of "for the last six months," as given in the printed form. It might be that the bail had only been one day at that place during the last six months.

Comyn, *contra*, cited a case of *Fenton v. Warre*, 2 Crompt. and Jer. 54, where it was held it was not necessary to state in the notice where the bail has resided for the last six months.

Butt said, that there was a contrary decision in the King's Bench, in a case before *Taunton*, J. (*Anon.* 1 Dowl. P. C. 160.); and in a subsequent case in the Exchequer, *Vaughan*, B. said, that the decision of the King's Bench should be adopted in this court.

Gurney, B. cited the words of the rule of Trinity term, 1 W. 4. rule 2, which are ex-

press, that "every notice of bail shall, in addition to the descriptions of the bail, mention the streets, &c. in which each of the bail has been resident within the last six months." You must give the residence for six months.

Upon looking at the affidavit of justification, it appeared to be correct; the bail having there expressly sworn in the words of the rule; and *Gurney, B.* said, he thought the notice connected with the affidavit was sufficient. His lordship consulted on the point with the other Barons, and on his return stated, they were of opinion, that taking the notice and affidavit together, the notice was sufficient.

Bail allowed—no costs. *Ward's Bail.*—Exchequer, Nov. 12, 1832. Before *Gurney, B.*

[See case of *Higgs's bail*, 1 Dowl. P. C. 124, that the notice of justification is sufficient without stating the residence of the bail, if it has been stated in the notice of bail.—*Jervis's Rules*, 2d ed. 29, n. (k).]

BAIL.—AFFIDAVIT OF JUSTIFICATION.

An affidavit of justification may be sufficient, if the rule (R. 2. of 1 W. 4.) is substantially complied with, though in form it may not be exactly conformable with that given by the rule.

J. Jervis objected to the affidavit of justification, that one of the bail merely stated that "his property, to the amount of £300, consisted of bank-notes," without going on to say, "over and above his just debts;" and the printed words in the form, which immediately followed, namely, "and every other sum for which he is now bail," were struck out. He stated that he had a good reason for omitting those words, for the affidavit in opposition stated, that upon search it was found that the bail had become bail in no less than four other actions. The affidavit was also wrongly entitled; it was "In the Office of Pleas," and no perjury can be assigned upon it.

Miller, contra, contended, that it sufficiently appeared from other parts of the affidavit, that the property was sufficient: he swears expressly that he is possessed of property to the amount of £300, over and above his just debts. It was not necessary to repeat that in the subsequent part of the affidavit.

Gurney, B.—That is sufficient. But how can you get over their affidavit, which states that you have become bail in four other actions?

Miller.—This is bail by affidavit. We have no means of contradicting their affidavit, unless your lordship will allow us time to swear an affidavit in reply.

Gurney, B.—Certainly not. If they have sworn falsely, you may move again.

Bail rejected, with costs.—*Perry's Bail.* Exch., Nov. 12. Before *Gurney, B.* See *Henshaw v. Woolrich*, 1 Crompt. & J. 150.

BAIL.—AFFIDAVIT OF JUSTIFICATION.

It is not sufficient for bail to swear that they are possessed of so much money over and above their just debts; but must say they are "worth" such sum.

S. Hughes opposed the bail in this case, on account of a defect in the affidavit of justification. The bail merely swore that they were possessed of a certain sum over and above their just debts. The form given by the act has the word "WORTH," which bears a very different meaning to the word possessed.

Gurney, B. held it a good objection. The bail might have property put into their hands for the mere purpose of enabling them to make the affidavit. [*Busby, amicus curiæ*, mentioned a case where all the Barons had been consulted, and they held the objection good.] *Crompton*, in support of the bail, proposed that the bail should be examined, as if there was no affidavit; but it appeared to be country bail, and the Court held the objection was fatal, whether it was taken as an affidavit under the new rules or not.

The Court gave time to amend, but allowed the costs of opposition.

Simpson's Bail. Monday, Nov. 12, 1832. Before *Bayley, B.*—(See *Henshaw v. Woolrich*, 1 Crompt. and J. 150.)

KING'S BENCH SITTINGS AFTER TERM.

COMMON JURIES.

<i>Middlesex.</i>		<i>London.</i>
Tuesday,	Nov. 27	Wednesday, Nov. 28
Thursday,	29	Adjournment Day.
to		Tuesday, Dec. 14
Tuesday,	Dec. 4	to
		Tuesday, 18

SPECIAL JURIES.

Wednesday,	Dec. 5	Wednesday, Dec. 19
to		to
Monday,	10	Monday, 24

COMMON PLEAS SITTINGS AFTER TERM.

COMMON JURIES.

<i>Middlesex.</i>		<i>London.</i>
Tuesday,	Nov. 27	Wednesday, Nov. 28
Thursday,	29	(Adjournment Day)
to		Friday, Dec. 7
Saturday,	Dec. 1	To Thursday, 13

SPECIAL JURIES.

Monday,	Dec. 3	Friday, Dec. 14
to		to
Thursday,	6	Monday, 24

EXCHEQUER OF PLEAS SITTINGS AFTER TERM.

Middlesex.

Tuesday, Nov. 27 } Revenue and Common
Thursday, 29 } Juries.
Friday, 30 | Common Juries.

London.

Wednesday, Nov. 28 }
Adjournment Day. }
Tuesday, Dec. 4 } Common Juries.
Wednesday, 5 }
Thursday, 6 }
Friday, 7 } Special Juries.
Saturday, 8 }
Monday, 10 }
Tuesday, 11 } Common Juries.

The Court will sit in London after the 11th of December, until the Causes are disposed of, and then return to Middlesex.

Before a Cause can be marked as undefended, notice must be previously given to the Defendant's Attorney. The Cause must be marked in the Marshall's book *two days* before the Sitting Day.

The Court will sit at Ten each day.

REVISING BARRISTERS COURTS.

In the case of the master of a free grammar school, whose appointment was for life, the claim has been admitted; and although the office was held subject to the conditions of the endowment, it was not like the instance of a charitable hospital, where the brethren were not to leave the town, or frequent a dissenting meeting, &c., and subject to other rules, at the will of the trustees.

Notices not signed by the objecting party, but by some one on his behalf, and *recognized by him*, are now sufficient. In *Goodtitle v. Woodward*, 3 B. & A. 689, a notice to quit by an agent, and subsequent recognition by the principal, was held by Lord Tenterden to be good.

NOTES OF THE WEEK.

THE LORD CHANCELLOR.

THE state of the Lord Chancellor's health, which has been considerably affected by his long and extraordinary exertions, will hasten, if it does not render absolutely necessary, the arrangement he announced, of separating the judicial from the political functions of his office. The reduction of the salary of

the Chief Justice of the Court of King's Bench, from 10,000*l.* to 8,000*l.* has led to an expectation of a proportionate reduction in that of the Lord Chancellor. A sufficient compensation, however, should be allowed for the additional expense which the Lord Chancellor incurs from his superior dignity. But we understand his Lordship intends to propose a division of his present income of 14,000*l.*, which will be still more satisfactory to the public: namely, that this sum shall be apportioned between the Chief of the Court of Chancery and the Speaker of the House of Lords. We shall rejoice to find this intimation carried into early effect. The injury to the suitors and the profession is incalculable, during the time of the sitting of parliament, when it is impossible for the duties of the Court of Chancery to be fully executed. The alteration here hinted at, would be the most popular of all the measures which have emanated from the present distinguished Head of the Law.

SOLICITOR GENERAL.

In answer to inquiries, we believe that there is no doubt Mr. Campbell has been nominated to the office of Solicitor-General; and that Sir William Horne will be promoted to that of Attorney-General. The delay in the official forms is owing to the inconvenience which would arise in regard to the seats in parliament, of the honorable and learned members, and other usual arrangements.

ANSWERS TO QUERIES.

Practice.

UNIFORMITY OF PROCESS ACT. P. 35.

The 11th New Rule of Michaelmas term states, "That upon all writs of *capias*, when the defendant shall not be in actual custody, the plaintiff, at the expiration of eight days after the execution of the writ, inclusive of the day of such execution, shall be at liberty to declare *de bene esse*, in case special bail shall not have been perfected." S. G. S.

Law of Landlord and Tenant.

DISTRESS. P. 16.

A mortgagee cannot distrain for rent upon the land in mortgage to him, where, since the forfeiture of the mortgage, there has been a

lease of the premises granted to a third person by the mortgagor: his only remedy, in that case, being an ejectment, which he may bring without previous notice to the tenant to quit. *Alehone v. Gomme*, 2 Bing. 54; and the case of *Keech v. Hall*, there referred to. I.

REPLEVIN.—SECOND ACTION. VOL. IV. P. 335.

A distress may be made for rent accruing due pending an action of replevin. See 1 Taun. 220. I.

FIXTURES. P. 15.

“It is a general rule, that a tenant, by annexing anything to the freehold, abandons his property therein; but this rule obtains with most rigour between the heir and personal representative, in favor of the inheritance. Its rigor is somewhat moderated between the executors of tenant for life, or in tail, and the remainder-man and reversioner; and still more so between landlord and tenant.” Com. Dig. tit. Biens (B), note b. I conceive that the law is not more favorable to a devisee, in respect to fixtures, than to the heir; the rule respecting emblements being one that has always been considered arbitrary, and not founded upon any just principles. As to the law regarding fixtures for domestic convenience or ornament, it seems difficult to state it; but if they be affixed to the freehold, and not affixed or erected for commercial purposes, they will come under the general rule. *Farrant v. Thompson*, 2 Dowl. & Ry. 3. I.

Common Law.

STATUTE OF LIMITATIONS. P. 15.

I think the action in this case cannot be sustained; as the day on which the goods were delivered will be taken into the computation of the six years (the time limited by the statute to be a bar to an action of this description); 4 Moore, 465; Hob. 109; and if so, there must consequently have been six years elapsed before the issuing of the writ. Had the writ issued the day previous, I conceive the statute would not operate as a bar to the action. I.

STATUTE OF LIMITATIONS. P. 35.

In my opinion, the generality of the words in the advertisement are restrained by the intention of *A. B.* Besides, by 9 G. 4. c. 14. it is enacted, that no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the Statute of Limitations, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby. Studiosus.

BANKRUPTCY.—TROVER. P. 51.

1. I am of opinion that an action will not lie against the vendors. See the case of *Atkin v. Barwick*, 1 Strange, 165. The defendant sent goods to *A. B.* in April, who, in May following, finding his affairs becoming bad, re-delivers the goods to a friend of the defendant, at the same time giving the defendant notice of such re-delivery; but before the defendant had expressed his consent to this return of the goods, *A. B.* becomes a bankrupt. Judgment was given for the defendant; and it was said by the Court, that the re-delivery was to be considered a discharge of the debt, and not as a gift; and, since it was paid in satisfaction, an acceptance must be intended, till the contrary was shewn. Now if an action will not lie where the vendor does not expressly signify his consent to the re-delivery of the goods, *a fortiori*, it cannot where he actually does. H. T.

2. If the barley was delivered, it became part of the bankrupt's “goods;” and a transfer of it to the vendors was, I think, fraudulent and void, under 6 G. 4. c. 16. § 73; and that, consequently, the property in the barley remains in the assignees. C. C.

State of Property and Conveyancing.

VENDOR AND PURCHASER. P. 16.

Sowarsby v. Lacy, 4 Madd. 142; *Lavender v. Stanton*, 6 *Ibid.* 4, are express authorities on this point; and in the late case of *Breedon v. Breedon*, at the Rolls, his Honor said, “They who have a power of sale, have a power to give a receipt for the purchase money thence arising.” C. S.

DEVISE.—CONTINGENCY. P. 51.

The son of the tenant for life takes an estate in fee-simple, after the decease of his mother; for the word “estate” or “estates,” in a will, carries a fee; and words of restraint must be added, to make it carry a less estate. *Holdfast v. Marten*, 1 T. R. 411. *Fletcher v. Smiton*, 2 T. R. 656. Studiosus.

QUERIES.

Common Law.

ACCOMMODATION.—ACCEPTOR'S REMEDY.

Accommodation acceptance:—The holder, without notice, releases the drawer from the bill, and afterwards sues, and recovers from the acceptor. *Fentum v. Pocock*, 5 Taunt. 192. *Carstairs v. Rolleston*, 5 Taunt. 551. The drawer being released, what remedy has the acceptor? T. T.

State of Landlord and Tenant.

DELIVERY OF POSSESSION UNDER THE STATUTE.

A landlord let a house to a tenant, who neglected to pay his rent, and possessed nothing of value to distrain on. Half a year's rent being due, the landlord offered the tenant to acquit him, and give him 5*l.* to deliver up possession: the tenant refused to do so, unless the landlord gave him 15*l.*, and declared he would sleep in the house on a truss of straw, to prevent the landlord from obtaining possession. The landlord was advised by his attorney to arrest the tenant, which he did; the tenant went to gaol, and the house was abandoned. The landlord applied to the magistrates at Bow Street, to obtain possession for him, under stat. 11 G. 2, and stated to the clerk that he had arrested the tenant. The justices, at the end of fourteen days, attended to deliver possession; but on being served with a notice by the tenant, that he was in custody at the suit of the landlord, the justices refused to take possession, and told the landlord that he could not avail himself of two proceedings; leaving the landlord without rent or possession of the premises. Cannot the justices be compelled to give possession to the landlord?

S. Z.

State of Property and Conveyancing.

MORTGAGE—EQUITY OF REDEMPTION.

A. mortgages certain freehold hereditaments to B. and his heirs, habendum to B. and his heirs; nevertheless upon trust, in default of payment of mortgage money and interest at the time stipulated, to make sale of the hereditaments. The deed does not contain a proviso for redemption, and authorizes a sale without the concurrence of A. and his heirs.—Has A. (or in case of his death, his heir) an equity of redemption, until the exercise of the trusts for sale? And if so, is not the equity destroyed as soon as the trusts are carried into execution? Can a purchaser be advised to accept a conveyance from B. alone, without the concurrence of A., or, if he be dead, of his heir? And ought the covenants for title in such a mortgage to be *general*, as is usual in mortgages containing a proviso for redemption, or *special and qualified*?

A STUDENT.

LEGACY DUTY.

A. B. by his will, after devising and bequeathing a portion of his freehold estates, personals, and an annuity, or *clear* annual sum, to C. D., devises the *residue* of his freehold property to trustees, upon trust thereout to raise and pay the said annuity, and subject thereto, and to the payment of his debts and legacies, and all costs, charges, and expenses attending the raising and paying such annuity, then in trust for E. F. for life, with remainder over. By a codicil, the testator charges his said residuary estate *exclusively* with the pay-

ment of the annuity, and his debts and legacies given by his will.

Is the legacy duty, payable in respect of the annuity, to be borne and paid by the annuitant, or by E. F.? and if by the former, will the latter, being (with the assent of the trustees) in receipt of the rents and profits of the residuary estates, and having paid all the debts and legacies, as also the annuity, to this time, be justified, on paying the duty, in deducting the amount from any future payments he will have to make to the annuitant on account of his said annuity?

G. G.

State of Attorneys.

ADMISSION—CERTIFICATE.

A.'s articles expire on 1st February next, so that he will be able to obtain his admission in next Easter term. He has then an opportunity of commencing practice on his own account; but a doubt has arisen, whether he will be then competent to practise, inasmuch as he cannot have complied with the provisions of the stat. 37 Geo. 3. c. 90. § 26, which enacts that every attorney shall deposit, between the 15th November and the 16th December in every year, with the Commissioners of Stamps, &c., a memorandum containing the name and usual place of residence of such attorney. His certificate is then granted. As A. will not be an attorney, but an articulated clerk, at the period prescribed by the statute for depositing the memorandum, can he obtain his certificate so as to enable him to commence practice when he shall have obtained his admission next Easter term? And if not, will he not be liable to the penalties imposed on unqualified persons, if he commence practice?

A STUDENT.

Ecclesiastical State.

CHRISTENING.

Can a clergyman refuse to christen a child, either on account of the proposed Christian name being irreligious, or from any other cause whatever?

A. R.

MISCELLANEA.

LORD KENYON'S RELIGIOUS HABITS.

LORD KENYON was a man of religious habits, and properly discountenanced any light allusion, in a speech or conversation, to the Bible, or to the service of the church. I recollect the ludicrous but unexpected reception which a member of the circuit met with on telling him the following anecdote of Lord Chief Baron Yelverton, of the Court of Exchequer in Ireland; I think it was my excellent and much lamented friend Nolan, who was a native of that country. He was a man of the

purest morals, not wanting in religious feelings, but who did not carry his sentiments of strict discipline as far as the learned lord. He seemed to think that an anecdote of an Irish judge would afford some amusement to the Chief Justice, but he unluckily happened to mistake the character of the tale which suited his taste, and so hit upon one not quite in accordance with his sentiments, on subjects connected with the church. He addressed himself to Lord Kenyon with the seeming anticipation of the mirthful effect which it would produce, by telling him that Lord Chief Baron Yelverton once went a Lent circuit, and one of the assize towns happened to be where one of his college contemporaries was beneficed. The reverend gentleman, anxious to make a display of his zeal and talents, and at the same time to shew his respect for the Chief Baron, asked permission from the sheriff to preach the assize sermon before the judges, and his request was granted. It was in the month of March, and the weather was intensely cold. The sermon was immensely long, and the Chief Baron most annoyingly chilled. When the service was over, the preacher descended from the pulpit, seemingly highly satisfied with his own performance, came to the judge rubbing his hands, full of the joyful expectation of thanks for his discourse, and gratulation for the excellence of its matter and delivery. "Well, my lord," says he, "how do you like the sermon?" "Wonderfully, my dear friend," replied Yelverton; "it was like 'the peace of God—it passed all understanding;' and, like his mercy, I thought 'it would have endured for ever.'" This jocular narrative was chilled by hearing Lord Kenyon, in an under-tone, pronounce the words, "Very immoral."—*From Fraser's Magazine.*

EFFECT OF CAPITAL PUNISHMENTS.

A gang of robbers had taken up their headquarters in the woods at Shooter's Hill. They were men of the most desperate and determined character; their depredations were extensive, and carried on with a daring which seemed to set the laws wholly at defiance. The neighbourhood was kept in a continual state of alarm, from the sanguinary course which they pursued, that of firing into carriages before they stopped them. To that system of plunder two persons had fallen victims, a Captain Nesbitt, master of an Indiaman, and an innkeeper from Rochester, who were shot in their chaises on their road to London. These were crimes of no slender enormity. The whole of the gang were however at last apprehended, and tried before Mr. Justice Heath at Maidstone. They were four in number, and all were capitally convicted.

He was applied to, and pressed to have them hung in chains near the place where their crimes had been committed, by reason of their enormity, and for the sake of example. He refused the application, and expressed his dislike of that mode of punishment as uncivilised and unchristianlike, adding, that it should never make part of a punishment ordered by him. He said, however, that he would make their punishment as awful and as exemplary as he could. This he carried into effect, by ordering the four convicts to be conveyed in mourning coaches from the gaol at Maidstone to the foot of Shooter's Hill, and a place of execution to be chosen as near as possible to the spot where the murders had been committed, and then to suffer death on a gallows to be erected there for the purpose. The distance from Maidstone to this spot was nearly thirty miles through a populous part of the country, and the sight to the people was novel and appalling. They gathered as the mournful procession moved on from every part of the road; and when it arrived at the place of execution, the crowd exceeded all calculation. In the sight of these the prisoners suffered death. The learned judge had formed a proper estimate of the effect which a public execution would, under such circumstances, have on public opinion. The distance through which the parade of death was made, brought before the eyes of thousands the consequences of crime and the awful certainty of punishment which awaited it. From that time the neighbourhood was freed from the terrors of that violence and rapine which before were of almost nightly commission, and continued for many years without any occurrence of their heinous description.—*From Fraser's Magazine.*

SINGULAR LAWS OF PROPERTY IN SICILY.

There is a custom in Sicily, which I must not forget to mention; this is a right of purchase of a singular kind. If any man buy an estate, be it house, land, or vineyard, the neighbour of the purchaser, for the space of an entire year afterward, may eject him by an advance of price. In vain would the first purchaser give more to the original owner. This singular law is generally evaded by a falsehood. The purchase-money is stated, in the articles of agreement, at a higher sum than has been agreed upon in the presence of four witnesses. There is another no less singular law in Sicily, according to which any man can oblige his neighbour to sell his house, if he will pay him three times its value. The intention of this law was the improvement of the towns. It was to encourage the possessors of large houses to purchase the humble abodes of the poor.—*Stolberg's Travels.*

The Legal Observer.

VOL. V. SUPPLEMENT FOR NOVEMBER. No. CXI.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

KING'S COLLEGE.

LECTURES OF PROFESSOR PARK.

No. X.

INTRODUCTORY LECTURE TO THE COURSE ON THE PRACTICE OF CONVEYANCING.

Tuesday, Oct. 30, 1832.

MR. PRINCIPAL, & GENTLEMEN,

THE lecture which, in the order of my official duties here, I have the honour to deliver before you this evening, is introductory to a course upon the *Practice of Conveyancing*. On a subject so peculiarly unfitted to that species of address which usage has partly established for the *publicum* of an English professor, I intend, without hesitation, to deviate from the accustomed track, and instead of paying that equivocal compliment to your judgment which would be contained in an oratorical discourse upon *Forms in Conveyancing*, to address you as a practical man upon a practical subject; but yet a subject, like most other practical ones, capable of some degree of generalization.

In doing this, I am aware that I may make some demand upon that species of attention which we are in the habit of exacting rather from the actual members of our class, than from that intelligent portion of the public who are attracted here on these occasions by their interest in this institution, or in the exertions of its professors. But I cannot forget that instruction is the *first* object that *this* institution proposes to itself; that it does not profess to be a place of *amusement*; and I will not conceal from you, that among the other objects to which I could wish law professorships in this metropolis to be instrumental, I am not without a desire that they should occasionally be

directed towards extending information among society at large; because I think we are living in a period when society at large take an amount of interest in the profession and practice of the law, and form a variety of opinions relative to it, which certainly demands a co-extensive increase of information.

Gentlemen, my sentiments with regard to legal education are already before the public. I have nothing to retract, and little to add to them, beyond my increased conviction that nothing effectual can be done, upon a large scale, until either the national legislation, or the domestic legislation of the profession itself, shall do its duty (notwithstanding the difficulties of the subject), and define, as in all other professions, the terms upon which the *student* shall be allowed to convert himself into the *actual practitioner*.

Here I should have dropped this subject, but that it happens, rather singularly, that I have this very morning received a packet from America, in which I find a letter from the Hon. Joseph Story, one of the Judges of the Supreme Court of the United States, which contains some passages, that I should feel I were omitting a duty, both to this and the sister institution in this metropolis, if I neglected to read to you, though they are unfortunately entangled with some commendatory expressions towards myself, which I may not be able to dissect from them without destroying the sense, and which will shew that even an American is not free from the charge of using hyperbole. I had not had the honour of any previous correspondence with this gentleman, but the letter was occasioned by a learned friend of mine having transmitted to him, in my name, a copy of my Inaugural Lecture of last session. He writes as follows:—

"Sir,—I should long since have thanked you for the very acceptable present of a copy of your Introductory Discourse to your Lec-

tures in the King's College, if it had not been most unaccountably delayed in its passage to America. It is but recently that I have received it; and I have read it with unmingled satisfaction. You have not exaggerated in the slightest degree the importance of a scientific study of Jurisprudence; and I do most earnestly hope, that the systematic course begun under such good auspices, will continue to receive favour in England, until it shall be deemed a discredit not to partake of it. In America, the value of such a course is fully appreciated; and our young gentlemen deem their education for the Bar quite incomplete and unsatisfactory, unless they have passed a considerable time at some Law Institution. Every day's experience makes them more and more deeply impressed with its advantages.

"Perhaps it may give you some notion of the earnestness with which every thing passing in Westminster Hall, and in your juridical institutions in London, is examined here, when I inform you, that almost every legal publication is imported within three months after it goes from the press in England. I have myself followed you in your whole course of lectures during the last winter, by means of the abstracts given in your law journals, within two months after their delivery. I do not hesitate to say, that if the common law is ever to attain to the perfection of a science, and to get rid of the anomalies arising from incorrect principles, and still more incorrect practice, it must be by expositions like yours from the professor's chair. Admiring, as I do, the common law, and having a sincere reverence and affection for its principles, I am not insensible to the blemishes which here and there disfigure it. They must be removed by a cautious hand and a philosophical spirit, disciplined by the closest studies, and taught to value it as a science, and not as an art. It has always appeared to me, that legal education was conducted too much as a matter of practice in England. This may make acute, ready, and accurate advocates; but larger and higher studies appear to me indispensable to make one of the noblest of characters—a great lawyer."

I will not trouble you with the rest of this letter, nor shall I weaken the force of these observations by adding any of my own. I shall, therefore, proceed at once to that which is the immediate business of the present course.

Gentlemen,—There are two opposite systems by which the transfers and transactions of the owners of landed property are *capable* of being carried on, and between the extreme points of which, in some portion or other of the intermediate ground, all existing systems must arrange themselves, according to the proportion in which the one or the other of the opposite principles prevails in them. **THE ONE** is that in which, like the present system of England, every transaction is accomplished, and evidenced, by means of sustained declaratory language, varying infinitely, according to the peculiarities or specialties of each transaction; and brought under the influence of a

technical and abstruse science, which defines and governs its effect, and the concoction of which language is consequently an intellectual and scientific operation. **THE OTHER**, that in which the effect is accomplished, somewhat like the transfer of stock, by a *mechanical* operation,—a process of book-keeping, of which the evidence is to be found, not in private muniments, but in the ledger-books or registers of the state; and in which, consequently, the objects and modifications which are accomplished in this country by sustained language, must be effected (so far at least as it is possible thus to effect them), by tabular entries or minutes upon those ledger-books or registers.

I speak of these two opposite systems rather as the two potential or possible systems which are opposed to one another, than as those which *mutually* exist at the present moment, so opposed; because I am not aware that there is any country in Europe or America—and I know nothing of conveyancing elsewhere—in which the latter system, that of conveyancing by book-keeping, exists in its pure and undiluted state, wholly unassociated with instrumentary conveyancing. There is indeed a certain description of lands in Austria (called *Bauerngüter*, or peasantry lands), lands held by a species of tenure resembling our villenage of former times, as to which no instrument is required, but the contracting parties, or the owner, appear before the tribunal of registry, and the entry is made upon a verbal demand. It would be improper, however, to speak of this as the *system* of Austria, since it applies to these particular lands only, and is said to be occasioned by the general ignorance of the peasantry, and the absence, in some districts, of persons of knowledge and integrity capable of drawing up the formal documents. Even the new registration system of the canton of Geneva, the most perfect, as a book-keeping system, of modern times, does not *dispense* with the instrument which constitutes the primary or inchoate evidence of the right acquired; but merely assumes to make the register, what it is in few other countries, a **COMPLETE** record and table of all the consequences of every instrument and other act, whether of law or of the parties; while, as a necessary correlative, it excludes *all* consequences which do not appear on the register. But it is sufficiently obvious, that such a system renders the instrument little more than a preliminary to registration, a voucher to the registering officers; instruments are retained, therefore, more as matter of convenience than as matter of necessity; as a part of the mechanism of registration, rather than as the actual constituents of title. Now it is obvious, that if the register-office were surrounded by notaries, as the Bank of England is by stock-brokers, and the entries on the register were made at once from the notary's minutes of the transaction, taken from the mouths of the parties, and that credit were given to the notaries, as credit is given by the Bank to the stock-brokers, for the *identity* of the parties, and *bona fides* of the transaction,—it is ob-

vious, I say, in that case, that a system might exist in which instruments were altogether dispensed with, and that the register might be the sole evidence of rights to real property: and therefore I put this as the extreme point of opposition to the system of instrumentary evidence prevailing in this country, although not at present, perhaps, in *full* practical existence.

I do not know that we can do better, in order to get an illustration of this antipodean system, than to fix our attention steadily upon that pursued in this country with regard to the transfer of stock; bearing in mind, however, this difference: that the books at the Bank concern themselves only with the direct and apparent, and consequently, sometimes, only with the *nominal* ownership; and, with the exception of bequests by will, take no note of those modifications and interests which are frequently superinduced upon that ownership by private instruments and settlements; a range of power which would have been too nearly judicial to be entrusted to a mere chartered company, although acting on behalf of the government.

I describe it as an antipodean system, not merely because of the difference in the *mechanism* of the two systems, but far more because of that momentous difference, that the system of public and authenticated transfer in the registers and books of the state, necessarily requires, to its perfection, that the title of the last registered owner, or transferee, should be conclusive against all the world, however defective it may really be, although the sale may have been made by a person who had no title himself, and only counterfeited the former owner; *unless* the purchaser was *himself* a party to a fraud, himself one of the *participes criminis* in the wrong committed. While, on the other hand, the system of English conveyancing, from that anxiety to preserve the right, and the remedy for the right, under all circumstances, which necessarily belongs to a system of private and unauthenticated transfer, begets the appalling consequence, that an innocent and *bona fide* purchaser may be actually *stripped* of his property by the effect of transactions which he never heard of, to which he was no party, and as to which his means of information and of judgment, even aided by professional advisers, were equivocal and uncertain.

In the one system, the State takes upon *itself* the duty of seeing to the title of the owner whom it admits to registration,—takes upon *itself* the risk of being deceived; in the other, it leaves the parties to concoct titles and transfers in secret and in silence; leaves them, unrestrained and unchecked, to transact with one another; but compensates this want of interference by the alternative of following the *right*, by its *judicial* machinery, against all parties, however ignorant, however innocent, who may have had the misfortune, at any time subsequent to a defective transfer, or wrongful succession, to become the owners or purchasers of the property; limiting that res-

toration to the rightful owners or their descendants only by reference to certain durations of adverse possession, varying, according to artificial circumstances, from ten to sixty years, and in particular cases without any limitation at all; so that a man who has been in possession of an estate, by himself or his ancestors, in all the intermediate period, may actually be stripped of that estate to-morrow, by a successful investigation of a transaction which occurred a century or upwards ago.

The two contending objects of these two systems are, *the one*, to protect the rightful owner; *the other*, the innocent purchaser. To protect the rightful owner, the law of England sacrifices *even* the innocent purchaser; an operation which she is herself so horror-struck with, that in some of her courts she has introduced a countervailing rule, by allowing a defendant (under certain circumstances) to set up that very fact of his being a *bona fide* purchaser, as a defence; while, in others of her courts, such a defence would be a mere non-entity. To protect the innocent purchaser, the *opposed* system sacrifices the rightful owner, except so far as the state may make itself liable to compensate the latter, *aliunde*.

The one system, that of this country, draws into existence a mass of *private* functionaries, whose business it is to concoct the transactions of transfer, and to countervail (as far as may be) their direful risk, by investigating the evidences of past transactions; which functionaries are familiarly called *conveyancers*. The other system congregates such functionaries, as subordinate officers of the state, in the different departments of the registry—to investigate the right of each candidate for registration, and to frame the entries and the indexes,—and perhaps invokes the tribunals themselves as auxiliaries in the business of investigating and determining applications.

The one system, that of this country, labours under these momentous disadvantages. It makes every dealing in real property to some extent, however small, a *gambling* transaction, a speculation in risks. It charges that property, on every transfer, by the inordinate expence of the countervailing process of investigation, with a tax which depresses its price in the market, and, in small transactions, almost amounts to a prohibition. Further, by occasionally, though perhaps rarely, restoring property to the descendants of a former owner, after it has long ago passed over into other hands, it plunges a family, accustomed and habituated to opulence or respectability, into ruin, or even beggary, for the doubtful object of raising the position of one who is *perhaps* unfitted for the change.

These are the *evils*, anything but small, anything but trivial, of the English *system*, as it now stands. It has rendered the whole fabric of English property-law complicated in the highest degree. It has, as a consequence, transferred the entire management of real property, and of *every species* of dealing in it, into the hands of lawyers; and while a man may have £10,000 a year in funded property,

without ever wanting a lawyer, if he will but sit quietly in his library and his drawing-room, and keep his hands out of trusteeships and executorships—it is scarcely possible that he can have even £500 a year in landed property, without considerable familiarity with lawyers and their bills of costs. By a singular fatuity, too, of this country, that portion of law business which most peculiarly needed it,—conveyancing and landed property agency—has been, to a great extent, exempted from the severe restraint imposed on the other portions, by what is called taxation of costs. It has been left to creep on gradually and insensibly, at the mercy of human nature, with all its cravings and infirmities, till lawyers and landed proprietors have come to be represented, not without *some* justice, as pikes and gudgeons.

I am sure no one will accuse me of having either spared or stinted the truth in this description. I shall be therefore entitled, perhaps, to some credit, and be exonerated from the imputation of mere professional advocacy, when I proceed to state to you what I conceive to have been, on the other hand, the *advantages* of the English system; for they have indeed made little progress in the philosophy of affairs, who suppose that *all* the evils are to be found in one system, and *all* the advantages in another; or that the choice between two systems, in any case, is anything more than a choice between different apportionments of evil, on the one side, and advantage on the other. The business of the publicist always is to analyse and estimate both, and to cast up the balance. He has then an ulterior question to determine, whether the evils of the *change, superadded*, will still *leave* the balance on the same side.

I stated that, in the English system, every transaction is accomplished by an *intellectual* process, by means of written language, varying infinitely according to the peculiarities of each transaction. In England, as a consequence, transactions with landed property are as free as the air we breathe. With the exception of a rule called the rule against perpetuities, or entails, for a longer period than one generation,—a restraint against posthumous accumulation of income for a longer period than twenty-one years, and some little influence from the usury laws, there is no device, arrangement, settlement, or disposition which imagination can conceive, or ingenuity construct, which the machinery of the law of England cannot carry into effect with certainty. There is no conceivable purpose to which property may not be applied, or rendered instrumental; there is no event, or combination of events, which can possibly happen in a family, of whatever rank or number, but what may be provided for and met, by a family settlement framed by a master of his art.

With the restraint of the three positive rules which I have just mentioned, there is in fact *nothing* which a conveyancer of consummate skill cannot do, and that with a certainty that it will effect its object. No novelty can appal

him, no complication can check him. He has scientific principles for every thing; he has logarithms for every possible ratio. His powers, like those of mathematical science, are, humanly speaking, infinite; they can never be exhausted. He may go on, like my preternaturally gifted friend Mr. Preston, constructing machinery during a long professional life of fifty years; and still, if he could but create a new term of years in his own favour, the only term over which he has *no* power, he might begin again, and construct machinery for fifty years longer. And when I use this term machinery, I am sure I do not convey to unprofessional auditors even the faintest idea of the fulness of meaning with which that figure is adopted; the certainty, the effectualness, the nicety, with which the most delicate and complicated operations are brought about by the implements of conveyancing in the hands of a master. The very perfection of the art is itself, sometimes, an evil; for so scientific, so complicated is this machinery, that the subordinate law agent is often unable to understand or explain it to his client; and I have known wills and settlements which were perfectly framed for accomplishing the object of the parties, actually rejected and abandoned, because they were too much for the brains of either the party or his solicitor. In other words, a Dutch clock has been sent for, because the works of an excellent chronometer were too elaborate to be comprehended.

So infinite is the variety of English conveyancing, that it will perhaps surprise unprofessional auditors, when I tell them that, in the practice of a conveyancer, there are no *two* deeds alike, any more than there are two leaves alike on any tree. There is hardly such a thing as a form of a deed which would answer its purpose twice over, by only changing the parties and the premises. A practitioner might keep it in *petto* all his life, before he should meet with the transaction which in all other respects it would exactly fit; and I have seldom been more amused than at the greenness of a pupil of mine, in his sixth month, who told me that some friends of his, who were about to be married, had asked him to draw them a settlement, and requested me to lend him a *form of one*. As well, Gentlemen, might a man go to an artist's painting-room to select his own portrait ready painted.

Now it is obvious, that this infinite variety and boundless license of English conveyancing, have arisen mainly from that very absence of all *mechanical* restraint which accompanies a system which leaves all transactions to private concoction, and prevents wrong solely by giving and keeping on foot, for a length of time, judicial remedies. No sooner does the state interfere—no sooner is the transaction to be registered, or described, or diagramed in any way (in other words, reduced to book-keeping), than the infinitude of conveyancing machinery is at an end; because there *must* be a plan for the book-keeping, and that plan *must* be finite and limited; the mechanism of registration never can keep pace with the power of sustained language. You will ob-

serve, that I use the word *registration* here in its proper or strict sense, as the public TABULAR evidence of property and rights; indeed, the word by which it is commonly expressed, by German lawyers is *Einverleibung*, or *intabulation*. I make this observation, because the Real Property commissioners have taught us, in their most ingenious plan, to use this word in a laxer meaning, by calling the mere deposit of our accustomed deeds, registration; while the only part of that plan which answers to registration, strictly so called, is that which they call the *indexes* to the register.

But I may add, that this very circumstance of the Real Property commissioners having determined to adopt the thing called Registration, and adopting under its name a deposit or enrolment of the deeds themselves, is a pregnant proof of their tacit conviction of the impossibility of reducing the contents of English deeds to tabular entries, without utterly altering the whole system, and substituting a limited number of known and fixed results, for the boundless freedom in which we now range in our dispositions of property.

That a portion of the extraordinary political and civil prosperity of this country has been derived from the unlimited power of rendering property applicable to every possible variety of purpose, and novelty of object,—from the unrestrained freedom which the owners of it have enjoyed, of making it subservient to every new occasion which a career of unexampled national activity has begotten, is in my opinion beyond a doubt. I shall, on some other occasion, shew how much also I suspect that, in a POLITICAL point of view, however objectionable otherwise, the tax laid on property by professional cupidity has also been contributory to that national prosperity;—a proposition more remote from common observation,—of which I have only late and unwillingly arrived at my own conviction; and upon which, to conduct you to my conclusion, I should be obliged to trespass more largely upon the chair of political economy than I have time to do this evening.

Gentlemen,—From various causes, the evils of the system of instrumentary conveyancing never attained that height on the Continent, with which they are reproachable in this country.

In the first place, the periods of limitation or prescription, in other words, the periods at which the possession of real estate, under a defective title, ceases to be open to attack by the rightful owner, were generally shorter than in England; and, as a consequence, less anxiety existed, and less investigation was required, as to the past title. In the next place, the almost universal existence of the *notarial* system operated to exclude altogether much of that uncertainty, and liability to fraud, which exists in this country, and which constitutes a part of the risk in dealing with real property, and a part of the expense in investigating the title to it. The notary of the continent was not only a public witness for every one who wished his testimony, but he was also the great witness of

government or the political society. He made all contracts, mortgages, and other deeds and conveyances, at least where the property in question was not of the most trifling value. The instruments of a notary had full authority, and no testimony against them was permitted. The notary kept a strict register of all his legal acts; and a party to a contract found the original of his instrument with him, in case he had lost his copy. In all these functions, the notaries acted as public officers, amenable to the state, and generally in constant communication with district committees of their own body, such as those now called the *Chambres des notaires* in France.

In the third place, even before the establishment of the more complicated registries which now exist in most of the continental states, mortgages, donations, and settlements were commonly required to be registered, and those which were unregistered were harmless to a subsequent purchaser, or mortgagee. It is true that these advantages were, at one time, almost more than counterbalanced by the system of tacit mortgages, or mortgages by implication, borrowed from the Roman law, under which the purchaser of every real estate was liable to find that estate tacitly hypothecated for the dowry or matrimonial contract of the wife, for the unpaid purchase money of a former vendor, for the claims of minors, or interdicts, upon former owners who might have been their guardians or curators, and of architects, contractors, masons, and others, employed in building or repairing the houses; besides various other descriptions of privileged debts, which in their own nature, and without any thing more, were equivalent to *judgment* debts with us.

A practice however gradually crept in, of selling nearly all estates under a process, which was originally a mode of execution, or compulsory alienation, namely, the *subhastatio* (or sale under a pike or pole), of the Roman law, which, having the effect of exonerating the estate from all evictions, by substituting a judicial distribution of the *purchase money*, was in time adopted as the most frequent means of effecting sales purely voluntary, and still exists in frequent resort; and by this means, principally, was that simplicity of title brought about, on the continent, which has so frequently puzzled English lawyers.

But we have, in this very instance, an illustration of the *correlative* evils of the two systems, for the very security given to the purchaser by this species of fictitious execution and sale, which guaranteed him from all eviction, subjected neighbouring proprietors, who happened to be out of the way at the time, or did not see the advertisements, to have their own lands sold over their heads, by their being included in the fictitious process, and *that* without the power of reclaiming them. Thus (as a foreign lawyer has remarked), one was in security as purchaser, but continually exposed as proprietor; that is to say, one was made confident one moment, never afterwards to be without inquietude.

More modern times have produced on the

continent a gradual and extensive approximation to that, which I described as the system of conveyancing by book-keeping.

Although the transfers of property are not, like those of stock, evidenced exclusively by the entries on the registers, although the notary of the continent still performs the function of the English conveyancer, and prepares a written evidentiary of the contract of the party, yet those entries on the registries are in many of the continental states made absolutely *conditional* to any future dealing with the property, and, to a certain extent, conclusive of the right:—not conclusive, indeed, as between the rightful owner and the registered owner himself, but conclusive as between the rightful owner, and all those who have dealt with the registered owner upon the faith of the register.

As a consequence, registration has become more or less a *judicial* operation; and instead of leaving parties, as we do, to find out their rights, and litigate them at some future period, every transaction is investigated at the period it actually takes place, the title of the party is looked into; persons having dormant or supposed interests, are summoned before the register office, and its protocols, instruments, and writings, have, within the boundaries of its jurisdiction, the force of judicial documents.

The great principle of the system is to shut out *future* litigation, by investigating each transaction at the time. Thus, should a contract for sale be the basis of a claim to registration, it must be shown, that the vendor has the power of disposition, and that the purchaser is not disabled from holding landed property. The sale must be shown to be accompanied with the ceremonies required by the laws and customs of the province: and, in general, the instrument must be executed in a prescribed form, before certain public authorities.

It might be a curious and important speculation, to enquire how far this system would be capable of being *engrafted* upon the English one, without diminishing the power and range of English conveyancing; and how far, after all that has been said by English lawyers, of the *impossibility* of titles being rendered *mathematically certain*, it might not be practicable—(all requisites being granted) to make the title to landed property, in this country, as certain and unsolicitous as the right to goods bought in open market.

The scheme of a *possible* system of that extent might be thus stated.

We will suppose a Registry Office to be established in the metropolis, upon a scale commensurate, for example, with that of the Bank of England, having two main divisions, one for its inquisitorial and judicial functions, the other for its mechanical duties. At the head of it, is the first property lawyer in the country, as master of the Registry, and principal Judge, subject only to appeal, as to questions of legal title, to (say) the Court of Common Pleas,—and, as to questions of equitable title, to the Lord Chancellor. Under him are a body of sub-masters, say sixty or eighty of the most experienced and eminent conveyancing coun-

sel, having each judicial authority, subject to appeal to the chief; with a due array of clerks, messengers, &c. The enrolment department would be under the conservation of a keeper, and an adequate number of subordinates.

The next step would be, to make it law that every man who purposes to sell, mortgage, or create derivative interests, (not being occupation leases) should first make himself proprietor on the register, by the production and investigation of his title before one of the sub-masters of registry. It is obvious that titles would come in just so fast as they now come in in the career of private practice, and no faster (except so far, perhaps, as the increased security should occasion an increased facility of selling or mortgaging). The number, then, of conveyancers who would now be competent, supposing them all in full practice, to investigate the titles brought into the market, would be competent to perform the functions of sub-masters of registry. The titles being produced to the sub-masters, they would diligently investigate them, compel the production of all deeds and papers upon oath, and call for the production of all such proofs as are now required in passing a title through the office of a Master in Chancery. The sub-master must, in fact, report whether a title be shown to *full registration*; and his report, if objected to, must be carried before the chief, on exception. There must also be a Court of Issues attached to the department, with an experienced evidence lawyer as Judge, and the sub-masters must have power (subject to revision by the chief,) to send any dubious question of fact to be tried in the Court of Issues, unless the party seeking registration should *decline* that ordeal, and withdraw. He must also have power to direct what parties shall be served with notice of such issues, and entitled to offer adverse evidence.

The sub-master must also, with the consent of the party propounding registration, have power to call before him by citation, parties entitled to the benefit of any *question of law* which might arise upon the title: and such parties, upon being furnished with a case, settled by the sub-master must elect whether or not to be heard by counsel in assertion of their right. If they decline, or make default for a given period, the sub-master must record the citation and non-claim, with a copy of the case annexed, and proceed to report upon the title, without reference to such question, and the record of such citation and non-claim would be pleadable in bar to any suit afterwards commenced by the party cited, or those claiming under him, unless the plaintiff could show, by counterplea, that the case signed by the master did not correctly state the question.

If the persons entitled to the benefit of a question of law or fact which the party propounding registry shall have consented to try in the Registry Court, should not be known, a citation would be granted *pro forma* to all persons entitled, as for example, heirs, or general devisees, or otherwise (as the case might be) of *A. B.*, and such citation would be published

in the Gazette, county papers, &c. and a further time allowed for the parties to come in.

Of course, the party propounding registration would never consent to such proceedings unless the defect were merely nominal, or too remote to occasion apprehension, or unless he were desirous of having the question set at rest, in confidence of his own title.

When, either with or without citation, the title shall be established, the sub-master would report the party entitled to full registration: if defective, he would report him entitled to provisional registration only, saving the right of *A. B.*; which at any subsequent time might be converted into full registration, by removing the defect, or by showing that the bar of the statute of limitations had applied.

You would, of course, enact that persons dealing with owners who had obtained full registration, should hold *as against all the world*; and those dealing with owners who had obtained *provisional* registration, against all but those entitled by proviso, leaving all other claimants, if any, who should afterwards establish a dormant title, to a personal remedy against the *original registered owner* in the first place, and if inefficient, against an indemnity fund to be established out of the fees of the office; and which, by being invested at compound interest, would soon be more than adequate to any possible demand upon it. The personal remedy against the original registered owner could be considered as no hardship against him, as he would be equally liable under the present system, (although to another party) under the covenants for title.

After this initial operation had been once gone through with each title, you would have little more to do, on every subsequent succession to the property by heirship, devise, alienation, and so forth, than to require the proper judicial evidence of all intermediate facts necessary to the title of the person then claiming to be registered as owner, and to have the new deed (if any) properly authenticated; making this next stage in like manner *conclusive of the state of the title, as to all persons acting on the faith of it*; and leaving the like remedies for dormant claimants (if any).

Questions would, of course, still arise, both of legal construction, and legal results upon facts; and these questions it would be necessary to dispose of, before the party claiming to be owner for the time being could be admitted to registration; in other words, before his title could be sanctioned, and rendered indefeasible, as to subsequent purchasers, and others; and thus, in effect, the whole business of adjudication in property law would be drawn into the tribunals of the registry; and that object accomplished which has been so powerfully recommended by Mr. Tyrrell and others, of having a separate tribunal for the adjudication of questions of property.

To some extent these very processes have been gone into on the continent. In Prussia, on the first establishment of the present registry, the title to each estate and parcel of land was made the subject of minute researches,

which were carried back for a space of forty years, the longest period of prescription required by the Prussian code; and in others of the German states, although the titles were not investigated in the same degree, the owners and incumbrancers of property were personally examined, and a keen course of investigation pursued into all particulars.

It is stated, that in Prussia, in despite of the utmost circumspection in the investigation of the title, it sometimes turns out that the estate does not rightfully belong to the registered possessor. But, notwithstanding the subsequent establishment of title by another, the registered possessor is *CONSIDERED as the proprietor*, in all transactions had with a third person, and the true owner cannot invalidate them, unless he can fix such person with *notice of his right*. The title of a purchaser; however, under a judicial sale, paying the price into Court, cannot be attacked by any one; and the Prussian law also contains regulations enabling all proprietors to render their titles indefeasible (with an exception of rare occurrence) by public citation of all claimants, and a judicial sentence (Cooper, 460). The judges of the local tribunal, collectively and individually, are responsible for the entries in the register, at least, where the defect of title is apparent; it being the duty of the tribunal to apprise parties of such defects; but where an eviction takes place, in consequence of some *latent* vice in the title, the tribunal is exempt. In all cases, recourse must *first* be had to the person who may have derived any unlawful advantage from the error. A similar liability of the registering officers is established in Norway; and in Geneva, it is proposed to render it still more effectual, by forming a guarantee fund, upon a large scale, out of the fees of the office.

Gentlemen, you are well aware that a system of registration has, after great labour, and the exertion of infinite ingenuity, been proposed for adoption in this country, by the Real Property commissioners, and that it awaits the final decision of Parliament. The system proposed belongs to those which, in the early part of my lecture, I designated as *intermediate* systems. It does not affect to guarantee the title of the registered proprietor, or that of the purchaser from him, further than by excluding from operation, *as against such purchasers*, all conveyances and charges, of which the register, or *index*, as the Commissioners term it, does not inform him, leaving the title open, as before, upon all questions of law and fact. Its principal novelty consists in the elaborate and highly ingenious machinery of indexing, by which this information, and its correlative exclusion, is to be effected.

The Commissioners have wisely abstained from any attempt to *mechanise* deeds, or to convert their contents into tabular entries, an attempt which would be destructive of that freedom of transaction which I have already enlarged upon as peculiarly existing in this country; and instead of that, they have made an attempt, highly redounding to the skill and

ingenuity of the framers, to mechanise *titles*: or reduce *them* to tabular entries; not by stating the *contents* of deeds, but by such a system of links, and chains, and offset-chains, and references, in the *indexes* to these deeds, that when once you have got hold of the first link of that chain which belongs to the title which you are concerned to investigate, you can follow that chain, link by link, and offset by offset, both down its main devolution, and all its ramifications; and thus ascertain, if necessary, by reference to the deeds themselves (which are to be deposited in the Registry) every written transaction by which you might be affected: while, on the other hand, every such transaction which has not been properly linked on to that chain, or its offsets, would be excluded from affecting you, the purchaser, with its consequences. The *indexes* are in fact to be great ledger-books, in which titles, or rather the references to the deeds which constitute titles, are to be *posted*; not, as has been hitherto practised, alphabetically, by reference to the names of the grantors, (a plan wholly abortive,) but analytically; somewhat in the way in which you sometimes see history drawn out into tables, by making every great dynasty a root, from which branch out, in a variety of places, the derivative dynasties, and so forth.

That I may be quite intelligible to all classes of auditors, it is necessary to pause for a few moments, to explain the precise meaning of the word "title," which does not convey to every one the same idea which it conveys to the mind of a lawyer. A title in this country does not mean merely those documents which *directly* confer right upon the existing possessor, as for instance, the deeds of lease and release by which an estate is conveyed to you, but it means the whole series, or succession of instruments, results, and events, by which the possessor for the time being could, according to the existing law of this country, be in any way affected, either as raising questions of dormant right in others, which might still be rendered available, or as creating incumbrances with which he is, or may be charged.

Gentlemen,—The success or failure of such a plan can only, as I imagine, be determined by experiment; for there *may* be titles to be found, in which the complication of interests, the division and sub-division, union and re-union of ownership, may defy all attempts to reduce them to analysis; and on the other hand there *may* be talents which may overcome, when the event actually arises, difficulties which in anticipation seem insuperable. You are aware, too, that there are considerable differences of opinion among professional men, as to the balance of good or evil to be found in this project; differences, which it is no part of the business of an academical professor to assume the determination of. Should the plan be allowed to proceed to experiment, and should it ultimately be found completely successful, *as far as it goes*—it will by that time, probably, become a very serious question—why a purchaser should be guaranteed from *one class* of

defects of title only; those, namely, proceeding from suppressed deeds, and unknown incumbrances, and why he should still be exposed to eviction upon questions of law, which have been overlooked by all who were interested, or results of concealed or unknown *facts*: when that time arrives, some such system of registration as that which I suggested to you, will probably be called for, and thus the plan now in agitation may probably be looked upon as a transitional stage, only, in that revolution which is now going on in the legal machinery of this country. I regret that I have not time to mention the other changes which are in contemplation;—but here, Gentlemen, I must terminate this brief sketch of systems of conveyancing, or transfer of landed property; for the remainder of this lecture must be dedicated to those who may have come here to learn the character of the course about to be commenced.

Gentlemen,—The lectures which will be addressed to you during the following months, are, as has been stated in the announcements, part of a larger course upon the practice of conveyancing, which is in contemplation. It will readily occur to you, that, at a period when so many extensive changes are in agitation, and on the very eve of being introduced, in relation to the machinery of conveyancing, there must be many portions of such a course which it would only be wasting time to enter upon, until those changes shall have been carried into effect, and the practice under them shall have settled into something like uniformity. A very considerable portion, however, of practice, is still to be left untouched, and I see no reason why, as to such portions, you should be delayed in receiving such information as it may be in my power to give you; and it may indeed, occasionally, be useful to look at practice as it now stands, with an eye to some of those modifications which are on the point of being introduced.

By "the Practice of Conveyancing," I do not mean the practice *upon titles*; nor yet the rules which determine the effect of the *language of conveyances*; but I mean the rules and reasons for the *framing* of deeds, under every variety of circumstance; both rules of law, and rules of *convenience*; and I intend, as much as possible, to resolve those identical questions which would occur to your minds on sitting down to prepare any instrument, as to the manner in which it ought to be prepared, under the circumstances which are before you; how far the presumable intention of the parties can be carried, by legal machinery; and the best mode of giving effect to that intention.

The courses of the last session were somewhat of a popular character: that upon conveyancing must necessarily be a *working* course. I trust you will come well provided with note books; and I beg to add, in the language of a medical lecturer elsewhere, "that punctuality in attendance is extremely important; and without exalting too highly the value of lectures, that one lecture lost, where a lecturer does his duty, is the loss of a link in a chain,

which may, and often does, inconvenience the loser very much."

Allow me, in conclusion, to address a few words to the junior portion of my auditors—to those who come here in *statu pupillari*, and who have been but recently dedicated to the studies and labours of the law.

Gentlemen,—You have entered upon an arduous and responsible profession, no less honourable to yourselves, if you succeed in attaining proficiency, than desolating to others if, by abusing or neglecting the season of acquirement, you betray those great interests which they may hereafter confide to your care. The principle of our nature, which you have more especially to struggle with, is no other than that to which we are *all*, in some shape or other, prone, and by which, in a variety of ways, we too often lay up for ourselves remorse, and perhaps unavailing repentance. It is, the tendency to sacrifice a *more* enduring and *more* important future, to a transitory and less material present. The student who loses sight, in the frivolous gratifications of youth, of the remorse which will arise from neglected opportunities and misspent time,—the prodigal who madly indulges his habit of thoughtless expenditure at the cost of a future of beggary,—and the This World-ian,—who in the pursuit of wealth or honor, forgets that he has any crown to win but an earthly one, are *all only* so many examples of the common weakness of our common nature—the predominance of the present over the future: and the efforts which our respected and esteemed Principal makes in the Chapel of this College to win its more immediate inmates to some resistance to this besetting weakness, are really directed against the same failing which, on a smaller scale, leaves the great majority of us to repent at leisure the recklessness with which we consumed the season of improvement.

Gentlemen,—In making this struggle against your nature, you will probably find *all* the circumstances by which you are surrounded taking part with your weakness, rather than with your better resolutions. You will find yourselves unsupported by the habit of the age. You will find the order of the day is against you, and you will gain little credit for what will be accounted by your associates a work of supererogation. Some of you, indeed, may be fortunate enough to be connected with persons, whose superior appreciation of the value of time, and of the necessity of close application, will give a sanction and a stimulus to your aspiring resolutions; and great is the influence of judicious and respected friends in enabling us to set at naught the ridicule or the blandishments of the world. But, generally speaking, you will, I fear, find the pleasure-seeking habits of the age, and the immediate calls of social life, fearful odds against the distant and speculative prospects of hard-earned erudition. You will be attacked too on delicate grounds. The arguments of your gayer friends will have a plausibility about them, which it will require no ordinary address to combat. You will be attacked on the score of *health*, as if a hundred

constitutions were not ruined by dissipation where one is enfeebled by study. You will be attacked on the score of *friendship*;—your personal regard for your tempters will be ingeniously held out as awaiting its test in the compliance with their solicitations. You will be attacked on the score of *gallantry*: and who will venture to incur the odium of preferring the company of musty books to the witcheries of female society?

Gentlemen,—I know but too well how small is the power of exhortation, when contending against the force of nature. I am not either one of that ascetic race who would try to make you believe that the pleasures of youth are *not* pleasures, because *they* are no longer capable of identifying themselves with the feelings of youth. I have as keen a zest as any one for the pleasures of busy idleness, which, I perfectly recollect, the kind of young men among whom I associated, when I was a law student, get up in a degree of perfection which is unknown to most people. They have so many places of call,—so many things to look after,—so many *phantoms* of business to appear in,—so many men they "*know*" to meet, and walk to this place and that place with,—so many tradesmen to speak with,—so many *half* professional and *half* official places to show themselves in:—all which *might* be left undone, and in fact all which *is* left undone, when *real* business and *real* importance arrives; but all which is very *gentlemanlike*, and very *proper*, and very *convenient* to be done.

Now, I know that it is in vain to expect to find old heads upon young shoulders; but that is no reason that young heads should not learn how those feel and think who once were young like themselves; and if you will look round among *all* your seniors; those who are now established around you in the world, in different degrees of honour and respect, as members of society, you will, I think, find no one man among them, who, if he neglected the season of acquirement and instruction, does not now bitterly regret it; and again, you will find no man who, in his youth, had strength to rise superior to the common temptations of the day, and devote himself assiduously to learning, who does not look back upon that period of his life with peculiar and self-rewarding satisfaction.

Now, gentlemen, I do not believe that the *youngest* among you has not already had *some* occasion to learn that remorse *is* painful, and *is* worth escaping from, and that self-approval *is* grateful, and *is* worth earning; and when to this consideration you add, what your own good sense will tell you, that present assiduity *must* promote and accelerate your worldly success, and guarantee your right to form, at an early period of your professional career, those relations of life, and acquire those external circumstances of respect, which we all look forward to as a trusted part of our present heritage, I think I may hope that exhortation will not be *merely* "as the morning cloud, or as the early dew that goeth away."

PLEASANTRIES OF THE LAW
REPORTS.

No. II.

THE old reporters abound in curious illustrations of the Law, which the increased gravity of modern times excludes from their collections of Cases. I purpose to give occasionally some specimens of these matters, and shall not be very particular as to the order in which I place them, but note them down as they occur. Let the reader for the present take the following.

By the old law of England, if a man married a woman that was a Jew, or a Christian woman married with a Jew, it was felony, and the party so offending was to be burnt alive. 3 Inst. 89; and see *Fleta*, lib. 1, c. 35. It has been doubted whether an idiot can contract matrimony. In *Styles v. West*, 3 Jac. K. B., it was adjudged that an idiot might consent to marriage and have legitimate issue. Shep. Gr. Abr. tit. Ideot. 1 Siderf. 112. And Lord Coke has said that an idiot shall be endowed. Co. Lit. 187; but particularly, says Shepherd, if he have so much knowledge that he can read or learn to read by instruction and information of others, or can measure an ell of cloth, or name the days of the week, or beget a child son or daughter, or such like, whereby it may appear that he has some light of reason, then he is no idiot naturally. See *Termes de la Ley*.

A writ was *ad respondendum J. S. et Fidei Uzori ejus*. The defendant pleaded in abatement of the writ, because the name of the wife was Faith in English, and pretended it should be *Fidi*. Rhodes said he knew a wife who was called Troth, and named Trothia in Latin, and well; and the writ was adjudged good in the former case. Goldsb. Rep. fol. 86.

A. gives B. such a stroke as befells him to the ground. B. draws his knife and holds it up for his own defence. A. in haste to fall upon B. to kill him, falls upon B.'s knife, whereby he is wounded to death; he is *felo de se*, for B. did nothing but what was lawful in his own defence. 3 Inst. 54. Hal. Pl. Cor. So if a gun be discharged with a murderous intent at J. S., and the piece break and strike into the eye of him that dischargeth it, and killeth him, he is *felo de se*; and yet his intention was not to hurt himself. If one persuade another to kill himself, and is present when he doth so, he is a murderer: but *quære*, if A. lay poisoned fruit for a stranger, and his father or mother come and eat it, whether

this is not petty treason, because it is not *crimen parisi gradus*. See Bac. Elem. 59, 60.

One Harman, a rich man, having some bad tenants, and being informed that one of them which owed him money had furnished himself to go to a fair, walked as if by accident to meet him in the way thither. When he saw his tenant, he asked him for the rent; the man (willing to dispose of his money otherwise) denied he had any. "Yes, I know thou hast money," said Harman (calling him by his name); "I prithee let me have my rent;" and with much importunity the man pulled out his money, and gave all or the most part of it to his landlord. This coming to some pragmatical knowledge, the poor man was advised to indict his landlord for robbing him on the highway, which he did; and Harman, for his sordid carriage, being ill-beloved in the country, was found guilty, but reprieved by the judges; and hearing the Lord Treasurer had a secretary of his name, applied himself to him, promising to give him all his estate, having no children, if his lord would bring him out of the danger he was in; which by his power with the King he did; and the secretary, within a short time after, by the other's death, enjoyed an ample estate.—Wilson's History, Temp. Jac. 1.

King Henry 8, by proclamation, 30 March, (37 H. 8.) suppressed all the stews or brothel-houses which long had continued on the bankside in Southwark, and those infamous women were not buried in christian burial when they were dead, nor permitted to receive the rights of the church whilst they lived. Before the reign of H. 7. there were eighteen of these houses, and that king for a time forbad them, but afterwards twelve only were permitted, and had signs painted on their walls, as the cardinal's hat, the boar's head, the cross keys, &c. Stow, and 3 Inst. 205. So odious and dangerous was this vice (the fairest end whereof is beggary), that men, in making leases of their houses, did add an express condition that the lessee, &c. should not suffer, harbour, or keep any *feme putaine* within the said house.—Ibid. 206.

If I. S. counsel or command one to kill a man, and he kill another, or to burn one man's house, and he burn another's, or to steal a horse, and he steal a cow, or to steal a black horse, and he steal a white one, or to steal a goldsmith's plate from him going to such a fair, and he go to his shop in Cheapside, and rob him there, and break open his house to do it,—in these cases the

counsellor shall not be accessory, because this is another felony. Plowd. 475. But if one command a felony, and it be done in another fashion, time, or place only, than it was commanded, he may be accessory to it. As if one bid another to rob *J. D.* on Shooter's-hill, and he does it on Gad's-hill, or to rob him one day, and he does it another day, or to do it himself, and he does it by another, or to kill him by one poison, and he does it by a sword,—in all these cases he shall be accessory. *Ib.* and see *Stamf. l. 45.* If one counsel a woman to murder the child in her body, and after the child is born alive, and then murders it in the absence of him that gave her the counsel, in this case he is an accessory, *Dy. 185. Plowd. 475.*

If *B.* have a right of entry into his house, he ought to have a common entrance at the usual door, and shall not be put to enter at a hole, a back-door, or a chimney; and if they leave the common door open and make a ditch, so that *B.* cannot enter *without skipping*, the condition is broken. So if I am obliged to suffer *J. S.* to have a way over my land, and when I see him coming, I take him by the sleeve and say to him, "Come not there; for if you do, I will pull you by the ears," the condition is broken.—*Latch. 47.* † * †

LAW OF ATTORNEYS.

No. IV.

PRACTISING IN COURTS OF WHICH THE ATTORNEY IS NOT ADMITTED.

It was the understood practice for many years, that a solicitor in Chancery,—if not an attorney at law,—might practise on the Equity side of the Court of Exchequer, and recover his fees, without being admitted a solicitor in the latter Court. The leading case in support of the practice was that of *Meadcroft v. Holbrooke*, 1 H. Blac. 50.^a This decision has lately been questioned, and we are therefore induced to enter somewhat fully into the subject.

By sec. 27 of 2 G. 2, c. 23, and sec. 19 of 22 G. 2, c. 46, the attorneys or clerks of the office of the King's Remembrancer, Treasurer's Remembrancer, Pipe or Office of Pleas in the Exchequer, are authorized to practise in the other Courts of Record,

although not admitted as attorneys or solicitors of any of those Courts; and as no attorney or solicitor of the other Courts could practise in any of the departments of the Exchequer, without the intervention of a clerk in Court; it seems to have been the intention of the legislature that the qualified practitioners of the other Courts should also be at liberty to practise in the Exchequer in the name of such clerks in Court, in the manner in use before the passing of the first mentioned Act; and that the only object of the legislature was to take care that none but attorneys and solicitors duly admitted of some of the Courts of Record should be at liberty to practise in any Court.

Thus in the latter part of section 27, 2 G. 2, c. 23, it is expressly enacted, that it shall be lawful for "any person who shall be sworn admitted and enrolled an attorney or solicitor in any of the several Courts before mentioned, according to the directions of this Act, to *practise and solicit* in the said *respective offices* in the same manner as heretofore has been done." These "offices" are the King's Remembrancer, the Treasurer's Remembrancer, the Pipe, and the Office of Pleas. And it appears that the Equity business belongs to the department of the King's Remembrancer.

It is observable also, that under the 10th section of the 2 Geo. 2, c. 23, the authority for solicitors in Equity to practise in the Common Law Courts in the name of an attorney of those Courts, extends equally to the practising in Equity of *attorneys at law* in the name of a solicitor.

It may here be important to notice the peculiar construction of the Court of Exchequer and its several branches of jurisdiction:—It consists of seven Courts. 1. The Court of Pleas. 2. The Court of Accounts. 3. The Court of Receipt. 4. The Court of Exchequer Chamber. 5. The Court of Exchequer Chamber for Errors in the Court of Exchequer. 6. The Court of Exchequer Chamber for Errors in the Court of King's Bench. 7. The Court of Equity in the Exchequer Chamber.^b

The officers of the Court consist of the King's Remembrancer and his deputies, two Secondaries, six Clerks, four Examiners, and twenty-four Side Clerks.^c But solicitors are not named as officers of the Court. They were, however, recognized (though not as officers) on the Plea side of the Court, and certain fees were allowed to them without their being admitted in any way on the Rolls of the Court. It may also be observed,

^a See also the cases of *Wilkinson v. Diggles*, 1 B. & Cr. 158. S. C. 2 D. & R. 302; and *Vincent v. Holt*, 4 Taunt. 452.

^b Burton's Practice. ^c Fowler's Practice.

that "solicitors" at law are named in the statute of 3 James 1, c. 7, which sufficiently shews that there was a class of practitioners besides the Clerks in Court; and there seems no reason for their being permitted to receive fees on the Common Law side of the Court, where they could not be admitted; and debarred from receiving them on the Equity, where they were equally precluded from practising, except through the medium of a clerk in Court.

A question, however, was raised last Hilary Term, in the Court of Exchequer, as to the right of attorneys at law and solicitors in Chancery to recover their fees for business done by them on the Equity side of the Court of Exchequer, when not admitted in that Court.

In the suit out of which the question arose (the *Attorney-General*, at the relation of *Crupper v. Malin*), the solicitor for the relators had obtained an order to take the defendant's answer off the file on account of a defective jurat; and the costs having been taken in before the Master for taxation, the defendant's solicitor objected to the allowance of all the relator's costs, except the Clerk in Court's fees and disbursements. The Master over-ruled the objection, and a motion was made before Lord *Lyndhurst*, at the sittings in Gray's Inn after Hilary Term, 1832, when his Lordship, after hearing counsel, referred it back to the Master to review his taxation. On the following day the subject was again mentioned, and the question was ordered to be re-argued.

For the defendant it was contended—

That a person admitted a solicitor in the Court of Chancery, but not in the Exchequer, was precluded by the statute 2 G. 2. c. 23, from recovering his bill of costs for business done in the latter Court. A person so situated appears to be subject to the prohibiting clauses of the Act taken by themselves, and there is no proviso or exception therein which can relieve him from their operation. Section 3 of the Act enacts, "that no person, after the time therein mentioned, shall be permitted to act as a solicitor in any Court of Equity, unless sworn, admitted, and enrolled, before the 1st December, 1730, in such of the said Courts where he shall act as a solicitor, or after that time, in manner hereinafter directed." Now, "the manner thereinafter directed," is pointed out by sec. 8, by which it is directed, "that the Judges of the different Courts of Equity there specified should examine the party to be admitted, as to his fitness to administer the oath, in open Court, and to cause him to be admitted a solicitor in such Court;" and the admission is to be signed by the judge, &c., who shall admit such person. There could be no doubt, upon these words, that the legislature contemplated an admission of the party in every Court of

Equity wherein he intended to practise. But if any doubt could exist, it was removed by section 21, which provides, that a sworn solicitor of one Court of Equity may be admitted in any of the said other Courts of Equity, without fees, in case the judges of such other Courts of Equity shall, upon examination, be satisfied of his fitness.

Then was there any proviso or exception, which could relieve a solicitor admitted in one Court from the operation of the prohibitory clause, with respect to business done in any other Court of Equity? By sec. 10 of the Act, a sworn attorney of any of the Courts of Law there specified, and a sworn solicitor of the Courts of Equity, may, by the permission and consent of an attorney of the Courts of Record there mentioned, and in the name of such attorney, sue out process, &c., notwithstanding such person is not sworn or admitted an attorney of such Court. Throughout the Act, attorneys of Courts of Law, and solicitors in Equity, are distinguished, and separate enactments made for the swearing and admission of each; and there is no proviso for the case of a sworn attorney or solicitor of one Court of Equity being permitted to act in the name of a solicitor of any other Court of Equity, when he has not been admitted himself. It seems to be a case clearly falling within the prohibitory clauses, but omitted in the proviso, or exception. It is remarkable, that there is a similar omission in sec. 20, which provides, that a sworn attorney may be admitted a solicitor, without fees, but makes no provision for a sworn solicitor being admitted an attorney. This last omission is supplied by a subsequent Act, the 23 G. 2. c. 26. § 15; but there is no subsequent Act remedying the former omission.

The business of the Exchequer being carried on in the names of the Remembrancer, or other officers of the Court, could make no difference; for when a solicitor sues his client for his bill, the foundation of his claim is, that he did the business upon the defendant's retainer, whether directly or indirectly is immaterial. The 24th section says, that in case any person shall, in his own name, or in the name of any other person, sue out any process, &c., without being admitted and enrolled as aforesaid, he is thereby rendered incapable of maintaining any action for any fee or disbursements on account of such proceeding.

Such was the view taken of the case upon consideration of the provisions of the act of parliament, without reference to the cases on the subject; but the question had been in effect decided by the case of *Vincent v. Holt*, 4 Taunt. 452, overruling *Meudowcroft v. Holbrook*, 1 H. Bl. 50. It was there decided that a solicitor duly admitted such in the Exchequer, was not entitled to practise in Chancery, without admission in that Court also; and if he did, he could maintain no action for his bill; and there was nothing in the act which conferred a more extensive privilege on a solicitor admitted in Chancery, than if he were admitted in any other Court. The section above referred to seems to

equally applicable to all solicitors whenever admitted. The case in 1 Barn. and Cress. 158, (*Wilkinson v. Diggle*, S. C. 2 D. & R. 205,) could not be deemed any authority on the present question, because the objection there raised to the plaintiff's right to recover, was made upon a different act of parliament, and the 2 Geo. 2, c. 23, was not referred to either by the counsel or judges.

On the other hand it was argued—

That the only prohibiting clauses of 2 G. 2, c. 23, which could be supposed to apply to the present case, were the 7th and 24th clauses. But by those clauses, nothing is prohibited except the practising "without being admitted and enrolled as aforesaid," which means, without being admitted and enrolled in some one of the Courts; and does not mean being admitted and enrolled in the Court in which the practising is. It is true that the 1st clause and the 3rd prohibit practising, without admission and enrolment in the Court in which the practising is. But they relate only to persons who should have been admitted and enrolled before the 1st of December, 1730.

In support of this part of the argument, *Mudocroft v. Holbrook*, 1 H. Bl. 50, was cited; and it was contended that the opposite case of *Vincent v. Holt*, 4 Taunt. 452, proceeded upon a mistake, and was not law.

The 27th clause, *ad finem*, was principally relied upon; by which it is provided, that after the 1st of Dec. 1730, any person sworn and enrolled a solicitor or attorney in any of the Courts, might practise and solicit in the office of the King's Remembrancer, and office of Pleas in the Exchequer, &c., any thing in the act notwithstanding. It was also contended that under this provision, attorneys of the King's Bench and Common Pleas had, until the passing of Sir James Scarlett's Act, always practised in the Court of Exchequer on the Common Law side, in the name of the sworn clerk, without being themselves admitted of the Court of Exchequer, and that under the same provision they might still practise on the Equity side, in the name of a clerk in Court, without being themselves admitted.

The case came on for final decision on Wednesday, June 6th, 1832; when Lord Lyndhurst delivered the judgment of the Court.

His Lordship went into an examination of the several clauses of the act of parliament; and observed, that those which relate to attorneys are the same as those which relate to solicitors. It seemed that the legislature did not think they were precluding solicitors from acting by a clerk in Court. Solicitors do not practise in their own names, but in the name of a clerk in Court. Therefore, a solicitor of one Court was not precluded from practising in another.

One difficulty was, that the 27th section alludes to the 21st, which authorises a solicitor of one Court of Equity to be enrolled in another Court of Equity. This clause, however, applied to a variety of other Courts; and it

was unnecessary to express an opinion on the general clauses of the Act. It was unnecessary to decide the general question. The legislature seemed to have had their attention particularly drawn to the Court of Exchequer, and his Lordship stated the sections applicable to that Court. A Roll was provided for the solicitors of the Court of Equity only, and not the officers. The officers were not admitted or enrolled according to provisions of the Act, but according to the custom of the Court. Referring to the 27th section, his Lordship said, "We know in the Office of Pleas, that attorneys practised in that office by the name of an attorney or clerk in Court, receiving a proportion of the fees, and not practising in the limited way mentioned by the defendant's counsel. In the office of King's Remembrancer, the business of the revenue and the equity business of the Court were transacted—not the business in the office, but the general business of the Court. It was not necessary for a solicitor to be admitted or enrolled in this Court; but being admitted a solicitor of Chancery, or any other of the courts of record, will entitle him to practise without being admitted on the Equity side of this Court, and which has been the constant usage."

Mr. Baron Bayley was of the same opinion, and observed that the words of the 27th section furnished the only ground on which he could give judgment. *Attorney-General, on the relation of Crupper and others v. Malin and others.* MS.

LEGAL ANTIQUITIES.

[We have received the following paper from a correspondent, who states he has experienced much benefit, as well as much amusement, from the perusal of the observations of the correspondents in this publication, and is anxious to contribute his mite towards the common stock of professional information furnished through the medium of these pages.]

I beg leave to offer the following remarks to L. M. 4 L. O. 352. When law proceedings were in Latin, they were often transcribed by clerks, &c. who possessed no other knowledge of Latin, than that which they had acquired from habit in copying documents connected with proceedings in the Courts. They were enabled, by the help of precedents, with the alteration of names, dates, &c. to concoct those instruments, the preparation of which formed part of the duties of their office, without any very great blunders. Mistakes, however, were not unfrequent. Now during the reigns of Philip and Mary, or of William and Mary, the use of the words "*regnor' nostror'.*" would, I conceive, have been proper. And I think it probable, that in the following reign, when "*regni nostri*" should have been substi-

tuted instead, a clerk, ignorant of Latin, would transcribe the forms used in the preceding reign, with no other alteration than that of names, &c. In a collection of old corporation charters in my possession, the words "*regni nostri*" are invariably used.

L. M. will observe that, in the quotation he has given, the comma should have been placed *after*, and not *before* "*post conquestum*," as those words have reference to "*Septimi*," and not to "*Sexto decimo*." The passage means, "In the sixteenth year of Henry, the Seventh King of that name since the Conquest." In the collection alluded to, I find a charter of Edward the Fourth, which recites one of Richard, "*secundi post conquestum*;" and a subsequent one of Henry the Seventh, which recites a charter of Edward "*quarti post conquestum*;" and one of Henry the Third, with "*tercius*" only, omitting "*post conquestum*." These are the only instances I have met with in this collection, where it is recited (for it is only in the *recited* charters that any explanation is given) whether the King be the First or Second of that name. In the instances where the name of the King, without the number of that name, is mentioned, the omission is accounted for by the use of the words "*patri nostri*," "*avi nostri*," "*proavi*," &c. As applied to Edward, the words "*post conquestum*," were obviously intended to distinguish him from the Monarchs of that name before the Conquest.

I have also met with some old title deeds, commencing in the reign of Henry the Sixth. These strongly confirm the suppositions before expressed. Amongst these deeds are two feoffments by indenture, and a release, made in the reign of Henry the Sixth,—a feoffment by deed poll in the reign of Henry the Seventh, and two or three in the reign of Henry the Eighth. In each of these, the words "*post Conquestum*" follow the name of the King, in the *testimonium*. They are sealed, but not signed, and the witnesses names, (generally five or six) are written in the body of the deed, immediately after the *hii testibus* clause. There is a feoffment by deed poll, in the reign of Philip and Mary, in which the words "*regnor': nostror':*" are used. It is sealed but not signed, and the witnesses names are indorsed in English. There are three others in this reign also having the words "*regnor': nostror':*," with the feoffor's name signed after those of the witnesses in the *hii testibus* clause, and not against the seal. There are some deeds of the reign of Eliz. in Latin and some in English, but all are signed at the place where the seal is affixed. A chirograph of fine levied in a Borough Court, in the reign of Charles the Second, is in Latin, but omits the words "*post Conquestum*" after the King's reign. It is worthy of observation, that the word "*feoffair*" does not occur in any of these deeds until the reign of Elizabeth. Some of those in the reign of James the First, are without it. One of the feoffments of Henry the Sixth is a beautiful specimen of penmanship. It contains the clause of warranty, and is altogether about three folios in length.

A STUDENT.

THE EARLIER DAYS OF LORD ELDON.

We have been amused by the following anecdote of our late Chancellor:

The first time that I had the honour of being introduced to this venerable nobleman (Lord Eldon), was when he was Mr. Scott, an eminent barrister; but so easy and unaffected in his manners, that he was generally designated *with the name of Jack Scott* by his brethren of the bar. His early friend, Mr. Richard Wilson, *for some reason generally styled Dick Wilson*, gave a dinner, and by desire of Mr. Alderman Skinner, Mr. Scott and Mr. Joseph Richardson, were particularly invited; and I was one of the party, with other friends. The object of Mr. Skinner was, if possible, to engage Mr. Scott and Mr. Richardson to take opposite sides in any subject that might happen to occur, though it was hardly possible, considering the rate of Mr. Skinner's intellects and the extent of his attainments, that he was likely to derive much advantage from the controversy, if it happened to fall within the reach of his capacity.

Mr. Richardson had been let into the secret, and therefore, before the company assembled, he took me aside, complimented me on my power of talking nonsense, and requested that I would endeavour, by the introduction of any flippant facetiousness, to prevent the expected disputation. [This injunction is obeyed.] I soon resumed my flippant gaiety, and being a bit of a singer in those days, gave the company a bacchanalian air which, on account of its jovial sentiments, not my musical merit, was encored; and such a spirit of convivial merriment ensued, that the worthy magistrate gave up all hopes of argumental improvement in despair, and retired. The rest of the company followed him by degrees; and, at length, nobody was left but Mr. Scott, myself, and our hospitable landlord.

I remember that, inspired by Bacchus, rather than by the Cumæan Sybil, as Mr. Scott sat on a sofa, I felt a prophetic glow, and said, "there sits an embryo Chancellor." Mr. Scott laughed at my jovial prediction, and required a repetition of my song; and, as Mr. Wilson tells me, for I confess I recollect no more, Mr. Scott arose from the sofa, and, placing himself at the door, declared that I should not depart till I had repeated the song. From that time the noble lord has favoured me with his kind attention; and when I had the pleasure of meeting him, has sometimes referred to our merry meeting, and my prophetic inspiration. Often has he favoured me with his arm, when we happened to be walking the same way.—*Taylor's "Records of my Life."*

BANKRUPTCIES SUPERSEDED.

From Oct. 23. to Nov. 23, 1832, both inclusive.

Billows, G. B., Poole, Ironmonger.
Cockrill, W., East Butterwick, Lincoln, Cornfactor, Grocer, &c. superseded.
Dennis, R., West Ham, Essex, Victualler, rescinded and annulled.
Jordan, W., Worcester, Coal Dealer, rescinded and annulled.

BANKRUPTS.

From Oct. 23. to Nov. 23, 1883, both inclusive.

- Ayckbowin, A. H., Wendover, Buckingham, Surgeon, &c. *Messrs. Gole, Lothbury.*
- Attenburrow, C., Costock, Nottingham, Surgeon, &c. *Brewster, Nottingham; Adlington & Co. Bedford Row.*
- Brough, W., and S. Smith, Sculcoates, York, Paint & Colour Manufacturers. *Rosser & Son, Gray's Inn Place; Frost, Hull.*
- Backmaster, W., Leamington Priors, Warwick, Wine Merchant. *Parrey, Leamington Priors; Spencer & Comp-ton, St. Mildred's Court.*
- Beeby, G., London Wall, Haberdasher. *Crowe, King Street, Cheapside.*
- Burrell, S., St. Ives, Huntingdon, Linen Draper. *Wright, Huntingdon; Lloyd, Bartlett's Buildings.*
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VOL. V.

SATURDAY, DECEMBER 1, 1832.

No. CXII.

——— “Quod magis ad nos
Pertinet, et nestire malum est, agitamus.”

HORAT.

REFORM IN CHANCERY PRACTICE.

THE Lord Chancellor's Bill for the improvement of the administration of justice in the Court of Chancery^a, may be said to aim at the greater grievances of the present system. It is not perfect, even if designed to assail them only: for example, the Six Clerks' Office remains untouched. Our object at present, however, is to direct the attention of those who are engaged in framing these legislative measures, to some *practical inconveniencies*, which we think need only be stated, to insure their removal. Perhaps some of them the Lord Chancellor may already possess the power of altering.

1st. The answers of defendants residing in or near London, should be sworn before the officer of the Court with whom they are filed. This, at present, is the Six Clerk to whose division the answer may belong.

Nothing can be more inconvenient or injudicious than the present method, although it must be acknowledged the present is a great improvement upon the ancient practice. Before the 13th of Charles the 2d, answers in Chancery were sworn before any of the Masters, at any of their houses or chambers; so that, as the act recites, “Through the difficulty of finding such answers, with what Master they were left, or through the Master's absence at such time as they were called for, it frequently happened that persons conceived to

be in contempt, were exposed to much trouble and charge.”

The present course, though not liable to the same objection, is anything but satisfactory. The answer must be sworn during a very limited number of hours; at certain periods of the year from eleven till one, at others from ten till two, and from six till eight. These hours are inconvenient. According to 13 Car. 2. st. 1, the office was to be kept open from seven in the morning till twelve at noon, and from two till six in the afternoon. The most convenient arrangement now would be from ten till four. Then the answer, when sworn, is left at the public office, where it remains until fetched by one of the clerks of the Clerk in Court. It may be a considerable period before it is removed, and there is the danger of injury or alteration before and during its removal. It may be true, that few, if any, instances of mischief have occurred; but the probability of them ought to be prevented.

It is singular, that the new Bill proposes to repeal this act of 13 Ch. 2, by which the public office was appointed, and offers nothing in substitution. We presume, therefore, some other Bill is in contemplation, which will supply the defect.

2d. For the same reasons, all *town affidavits* should be sworn at the office where they are required to be filed. Here the precaution of depositing the affidavit at the public office, to be taken away by the clerk of the affidavit-office, is not resorted to; so that the practice in the two cases is inconsistent. It is a waste of time, without any excuse, to compel the practitioner to

^a See vol. 4, pp. 343 and 369.

go to two separate offices at some distance from each other, to perform that which might be done at one; and as the affidavits, when sworn before the Master, are delivered to the deponent, or the solicitor's clerk, an opportunity is afforded of making alterations in the document before it is put on the file of the Court. It is to the credit of the parties, that the confidence reposed in them is not abused; but if this be a sufficient reason for abandoning all precautions, it may as well be carried a little farther, and leave the affidavits in the custody of the solicitor, and make him answerable for delivering a correct copy to his opponent. If there is to be the expense of a record office, let it be efficiently conducted, and rules established which will prevent the possibility of mal-practice.

Again, the time of the Master, now devoted to the daily occupation of hearing the oath administered, and signing his name to the jurat, might be saved to the public, and the complaint of delay in the Masters' offices in some degree removed.

3d. Answers, as well as affidavits, in the country, might be sworn before the Masters Extraordinary, and transmitted by them through the post-office to the Clerk in Court, in the manner long ago pointed out by a correspondent.^b

4th. It would be of great advantage also, if proper officers were appointed exclusively to attend to the taxation of costs. Some of the present Clerks in Court who have had the greatest experience in such matters, would be the most fit persons to be appointed. The time of the Masters and their principal clerks, now considerably occupied in taxations, would then be devoted to the general business of the office.

We have received some other suggestions for the improvement of the Chancery offices, which we shall take another opportunity to introduce. The preceding hints are entitled, we think, to serious consideration.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1831—1832.

No. VII.

STAGE CARRIAGES, AND HIRE OF HORSES.

2 & 3 W. 4, c. 120.

THIS Act, which received the royal assent on the last day of the session, 16th Aug.

^b See vol. 1, p. 26.

1832, came into operation on the 11th October, so far as relates to *stage carriages*, and matters connected with them. As to *horses*, and *licences* for letting them, it comes into operation on the 1st Feb. 1833.

The following provisions are of a general nature, and may therefore be first noticed:—

The distinctions are removed in the amount of duties as to stage carriages of different kind, and as to passengers travelling in or outside. By 50 Geo. 3. c. 48. § 2. and 55 G. 3. c. 185, children in the lap were not counted. The 35th section of the present statute re-enacts those provisions, and provides that *one* child under seven years shall not be counted, though not in the lap. If there are *two*, they are reckoned equal to one passenger, and so on in proportion.

It is presumed, that should there be three children of the description here intended, they will be counted as one passenger only, and that the same calculation will prevail with any other odd number, as two for five, three for seven, &c.

The definition of a stage carriage, as employed in the Act, is thus simplified: that in all proceedings at law or otherwise, it shall be sufficient to describe any carriage, &c. by the term "stage-carriage," without further or otherwise describing the same. Provided, that this shall not extend to any carriage used upon any railway, nor to any steam carriage, or otherwise than by animal power.

The following clauses are of general importance to travellers, and we give them fully:

Where no outside passenger or luggage is allowed.—No outside passenger, nor any luggage shall be carried on the top of a stage-carriage, the top of which shall be more than eight feet nine inches from the ground, or the bearing of which on the ground shall be less than four feet six inches from the centre of the back of the left or near wheel. § 37.

Limitation of outside passengers.—Any licensed stage-carriage with four wheels or more, the top of which shall not be more than eight feet nine inches from the ground, and the bearing of which on the ground shall not be less than four feet six inches from the centre of the track of the right wheel to the centre of the track of the left or near wheel, and drawn by not less than four horses, may carry ten outside passengers. When drawn by two or three horses, and licensed to carry four inside, may carry six outside. When licensed

to carry six inside, may carry seven outside, exclusive of the driver and conductor or guard. § 38.

Distribution of outside passengers.—One only may sit with the driver; three on the front of the roof; three on the back of the roof; and the remainder, if more than seven, on a safe seat on the hind part. § 39.

If the seats on the roof are not less than five feet in length, and if there be no luggage on the top exceeding nine feet nine inches from the ground, measuring to the highest point of any part of the luggage, and if the top of the boot behind be not more than six feet from the ground, *two additional outside passengers* are allowed, four sitting in front, and four behind. § 40.

As to luggage.—A separate division is to be railed off on the roof, § 42. No luggage to be higher than ten feet nine on four-horse carriages, and ten feet three on two-horse carriages. § 43. No person to sit on the luggage. § 44.

The penalty for breach of any of these regulations is £5.

Hiring Horses.—Persons using hired horses, shall deliver the tickets at the first toll-gate, and receive check tickets, which shall be shewn at other gates when required. § 64. Penalty £10, by § 66, for neglecting to deliver tickets, or falsely alleging horses to be their own.

Limitation of actions under the act.—Actions brought for any thing done under the act must be local, and brought within three calendar months after the fact. One month's notice to be previously given. Amends may be tendered. § 116.

The licences will in future expire the first Monday in October, instead of the 31st July, as heretofore.

THE PROPERTY LAWYER.

No. VII.

TITLE DEEDS.

The rule, both of law and equity is, that the owner in fee of the land is entitled to the title deeds; and it would seem, from the case we are about to quote, that he will be considered so entitled, although he has been guilty of any degree of negligence which does not amount to fraud, and against a mortgagee. But the Court will not order the delivery of the deeds to be made to a termor, however

long his term may be. *Wiseman v. Westland*, 1 Yo. & Jer. 117.

Trover for title deeds.—Plea, not guilty.

At the trial before Lord Tenterden, C. J., at the Middlesex sittings after Trinity Term, 1830, a verdict was found for the plaintiff, subject to the opinion of this Court, on the following case: In 1803, the estate to which the title deeds related, was duly conveyed by James Brograve to William Harrington and his heirs, for a sum of money, which was paid, and the purchaser had possession. He conveyed it, in 1812, to his nephew Andrew Harrington, by whom, in 1826, it was sold for 45*l.*, and duly conveyed to the plaintiff, who was lawfully seized of the estate when this action was brought. At the time of the conveyance, in 1803, Brograve refused to deliver up the title deeds, alleging a claim in respect of certain quit-rents due upon the estate to the lord of the manor; but this claim was afterwards satisfied (in 1812), and it was admitted, in arguing the case, that Brograve had no right to the deeds as against the plaintiff. In 1824, A. H., the then possessor of the estate, sued Brograve in trover for the deeds, (which had been before demanded and refused) and obtained a verdict for 100*l.*, to be reduced to one shilling, on delivery of the deeds. Final judgment was signed, and a *fi. fu.* issued; but Brograve absconded, and the writ was not executed, nor the deeds delivered; and the judgment was not docketed till 1827. In September, 1825, Brograve mortgaged the estate to the defendant Price for 30*l.*, and deposited the title deeds with him. The plaintiff having learned, in October, 1829, that the deeds were in the hands of Price and the other defendant, applied to have them delivered up; but the defendants refused, Price claiming a right to detain them as a security for the money advanced by him to Brograve.

Kelly, for the plaintiff.—The plaintiff is entitled to these deeds on the principle of law, that the right to the estate carries with it the right to the title deeds. Nothing has occurred to divest his right or confer any title upon the defendants. *Flooper v. Ramsbottom*, 6 Taunt. 12, is exactly in point. The judgment against Brograve was not docketed; but that makes no difference, for Brograve would still have had no title, if no action had ever been brought. Again, it may be said the plaintiff has been guilty of negligence; but how can that alter the property in these deeds? He might reasonably be unwilling to sue Brograve for the title deeds of a property of such small value. And if the plaintiff was negligent, the defendant Price was equally so.

Campbell, contra.—No doubt, as between the vendor and vendee, the title deeds follow the title to the land; but if the purchaser has allowed the vendor to retain them, and thus to commit a fraud upon an innocent party, he cannot maintain an action for the recovery. It may be said these deeds are of no value to the defendant, since he cannot get the land: but that is not so; if he can discover an out-

standing term he may be able to complete his title. [*Littledeale, J.*—It is found in the case, that the plaintiff has the legal estate. There cannot, therefore, be any term outstanding.] There has been great negligence in the Harringtons, in not securing the deeds. It was the business of the purchaser to obtain them before he paid the consideration money. If he had done so, and they had afterwards been taken from him, the case would have been different. Another piece of negligence consisted in not docketing the judgment. If that had been done, the judgment would have appeared as a lien on the land, and the mortgagee would not have lent his money. In such a case as this, a court of equity would not interfere. Thus in *Head v. Egerton*, 3 P. Wms. 280, where a second mortgagee, without notice, had possession of the title deeds, the Lord Chancellor would not compel a delivery of them up to the first mortgagee, without payment to the second of his mortgage money. In *Hooper v. Ramsbottom*, 6 Taunt. 12, Wells, the purchaser, had not been guilty of any negligence or misconduct. Besides Wells, there, had no complete right to the possession of the deeds; whereas Harrington had a perfect title. This is more like *Parker v. Patrick*, 5 T. R. 175; or it may be considered as within that class of cases regarding personal property, where a man having allowed another to act and dispose of the property as the real owner, is taken to have authorised such dealing with it, and cannot recover from persons to whom it is conveyed. On the same principle, the plaintiff here cannot recover the deeds from Price till he has been repaid his mortgage money.

Lord Tenterden, C. J.—To us, sitting in a court of law, this is a very clear case. It is an established principle, that whoever is entitled to the land has also a right to all the title deeds affecting it. But it is contended, that the purchasers here were negligent, in not securing the title deeds, but leaving them in the hands of the vendor. Fraud is not suggested, (which might have made a difference) but only a neglect, by which the vendor has been enabled to commit fraud. Is there, however, no negligence on the other side, when a man advances money upon title deeds without inquiring as to the possession of the land? There is equal negligence on both sides. We are pressed with the decision of Lord Talbot in *Head v. Egerton*, 3 P. Wms. 280. But the cases are not alike: for in that the first party was a mortgagee; here he was a purchaser. A mortgagor continues in visible possession of the premises; and therefore his retaining the title deeds is a circumstance more likely to mislead. It is very different with a vendor. I do not presume to say what a court of equity would do in this case: it might say, that when both parties had been equally negligent it would not interfere. Here the plaintiff brings his action in a court of law, and is entitled to recover on his legal right.

Littledeale, J.—The plaintiff has the legal right to these deeds. It is clear there was no fraud on his part; and if he has been guilty of

negligence, this Court cannot say that his title is not good. As to *Head v. Egerton*, 3 P. Wms. 280, that was the case of a mortgage, and a mortgagor generally remains in possession of the estate.

Taunton, J. concurred.

Patterson, J.—This is put by the defendant on the ground of negligence; but it is clear, that unless there was such negligence as amounted in effect to a fraud, the plaintiff must recover on his strict legal right. I do not think there was; and if there be any negligence, it is quite as much on the part of the defendant as the plaintiff.

Harrington v. Price, 3 B. & Ad. 170.

This case is one of the few instances of known fraud, which would be prevented by a general register of deeds. All the cases on the subject are not cited in the argument or judgment. They are, *Field v. Yeu*, 2 T. R. 708; *Fairfax v. Hussey*, Vin. Abr. tit. Fuit. pl. 15; *May v. Hurvey*, 13 East, 197; *Shaw v. Shaw*, 12 Pri. 163; *Lingen v. Simpson*, 6 Mad. & Geld. 290.

REVIEW.

A Collection of Statutes; comprising all the Public Acts, Civil and Criminal, Irish and Scotch; the Acts relating to the Colonies, and the Metropolitan Cemetery Act, passed in 2 W. 4, and 2 & 3 W. 4; with Notes, shewing the Alteration made in the Law by each Statute. By Alfred S. Dowling, Esq., of Gray's Inn, Barrister at Law. London: S. Sweet; Stevens and Sons.

We are glad to see this continuation of Mr. Dowling's useful collection of the Statutes. The present volume comprises one hundred and eleven of the Public General Acts, of which we gave a list in the last number of the Monthly Record, vol. II. p. 412. These occupy no less than 903 pages, and they are accompanied with concise notes, which sufficiently explain the objects of the Statutes, and the changes they have effected.

In addition to the Public General Acts, are given some Local Acts, which are of extensive interest; such as the General Cemetery, and the London Bridge and its Approaches. A very copious Index is added; and the publishers laudably continue to fix a moderate price. A Law-book, exceeding in the whole 1000 pages, for 18s., is a great novelty, and must bring this large body of Statute Law within the means of all branches of the profession. The plan of the work is good, and it has been carefully executed.

DISSERTATIONS ON SCOTCH LAW.

No. III.

THE INFERIOR COURTS OF SCOTLAND.

THE inferior Courts of Scotland are of considerable importance, and some of them exercise much authority.

The first of these is the Sheriff's Court. It formerly had very extensive jurisdiction, and to this day the Sheriff judges in all personal actions upon contracts and bonds, to the utmost extent; in actions for rent, and of forthcoming in poindings of the ground, and even in the adjudication of lands, when it proceeds on the renunciation of the heir apparent; in all possessory actions, and generally in all civil matters which are not by special law or custom appropriated to other courts. The Sheriff has also a peculiar criminal jurisdiction, which, however, is now chiefly exercised in matters of police, and breaches of the peace in the county over which he presides.

Besides these judicial powers, the Sheriff has also most of the ministerial powers exercised by the High Sheriff in England; he returns juries, and executes writs; he is intrusted with the general superintendence of the county; and to him, since the Union, writs are directed for the election of members of Parliament. By the 20 G. 2. c. 43, it is enacted, that no Sheriff shall be appointed for more than one year; and power is given to the King to appoint in each court a Sheriff-depute, who must be an advocate of three years standing. To these deputies is intrusted the administration of justice in the Sheriff's Court. They hold their offices during the pleasure of the Crown, have the power of appointing substitutes in different parts of the counties, and of holding itinerant courts.

Before the 20 G. 2. c. 43, various local courts existed in Scotland, some with very extensive powers, under the names of heritable jurisdictions, of justiciary, regalties and heritable baileries, and constabularies, stewartries, and sheriffships, &c. But by that act these are dissolved, and for the future no stewartry can be granted for more than one year.

Next to the Sheriffs, come Justices of the Peace; but it will be unnecessary here to mention their powers and duties, as they differ very little from those of an English justice of the peace, it having been expressly enacted that the former may exercise all the powers of the latter. 6 Ann.

c. 6. The magistrates in Scotch boroughs have nearly the same powers as the magistrates in English boroughs. The boroughs in Scotland are divided into boroughs royal, and boroughs of regality. The former enjoy greater authorities than the latter. In these, the ordinary magistrates are the provost, bailies, dean of guild, and treasurer, together with a common council. The provost, bailies, and common council, are similar, both in the nature of their offices, and in their powers, to the mayor, aldermen, and common council of an English borough. The dean of guild is peculiar to the Scotch borough. He is the head of the merchant company of the borough. He had formerly a jurisdiction in all cases between merchant and merchant: but it has now sunk into desuetude. It still belongs to him to take care that buildings within the borough, &c. be agreeable to law, and that houses in danger of falling be pulled down.

Judicial rights are also exercised by landholders, who have derived their lands from the King in *liberam baroniam*, and are hence called barons. These are in some respects similar to those exercised by the lords of manors in England; the baron appointing a bailie, whose duties embrace most of those exercised by the steward of an English manor, added to most of the petty powers of a magistrate over the separate vassals of the barony. The baron formerly exercised many important powers in his own domains, but these were greatly curtailed by the 20 G. 2. c. 43.

There are some other inferior judges, who exercise local petty authority; but these it is useless even to enumerate.

ON THE CRIMINAL LAW.

SECONDARY PUNISHMENT.

THE abolition of the punishment of death in a large class of cases, renders it more than ever necessary that the attention of the public, as well as of the legislature, should be directed to the subject of secondary punishments. We shall, from time to time, lay before our readers such information as we may collect, and such observations as occur to us. For the present, we shall find room for the following abridgment of the views of Dr. Whately, the Archbishop of Dublin.

First, and above all other considerations, h

recommends that the punishment should be *formidable*: that the apprehension of it should operate as much as possible to deter from crime, and thus prevent the necessity of its actual infliction.

Secondly; it should be *humane*—occasioning as little as possible of useless suffering.

Thirdly; It should be *corrective*, or at least not corrupting, tending to produce in the criminal if spared, and in others, either a moral improvement, or, at least, as little as possible of moral debasement.

Lastly; It should be *cheap*.

Dr. Whately then recommends the adoption of confinement in penitentiaries, with hard labor and partial solitude, in lieu of transportation. In the management of these establishments, he suggests that convicts should not be allowed unrestricted intercourse when unemployed. The pleasures of society amongst convicts—besides diminishing the effects of punishment most to those where it is most wanted, viz. to those who have been accustomed to bad company—can scarcely ever fail to have a very corrupting effect.

Such criminals as are sentenced to hard labor, ought to perform a *certain amount of work*; compelling them to a certain moderate quantity of daily labor, but permitting them to exceed this as much as they please, and thus to shorten the term of their imprisonment by accomplishing the task in a less time than that to which they had been sentenced. Allow them also, for a certain portion of their work, payment in money, not to be expended during their continuance in prison, but to be paid over to them at their discharge; so that they should never be turned loose upon the world entirely destitute. The object in this is to superadd to the habit of labor an association, not merely of the ideas of disgrace and coercion with crime, but also of freedom and independence with that of labor.

The kind of labor should be profitable enough to go some very considerable way towards defraying the expense of maintenance; but this is of less consequence than the moral improvement of the offenders; still more, the prevention of crime by the apprehension of punishment.

It should be such kinds of labor as the convict might resort to after his discharge, as a *means of maintenance*; and with this view, to be carried on without the aid of much machinery. In this respect, the tread-mill is less eligible than many others, though it has great advantages. Recourse might be had to some of the less artificial, rude, laborious operations of husbandry—such as trenching, stone-picking, &c. This would require a larger number of such overseers as could be relied on for vigilance and firmness, to prevent the escape of the convicts; but there are sufficient advantages to make this plan well deserving a trial. In particular, it would afford great facilities for the adoption of task work.

A strict enforcement of cleanliness and ventilation, and also of quietness, order, and decency, should be aimed at in every peniten-

tiary, as having the double advantage of not only saving from unnecessary suffering those who, generally speaking, will be of the less atrocious class of criminals, but also as even adding wholesome terror to the punishment, in the eyes of all those whom it is most important to deter.

REMARKABLE TRIALS.

No. XVIII.

MAJOR GEORGE STRANGWAYS' CASE FOR ASSASSINATION, 1657.

MAJOR Strangways was the son of a gentleman of ancient family in Dorsetshire, and obtained his rank in the service of Charles I. On his father's death he was left in possession of a farm, which his sister, a maiden lady, named Mabellah, stocked at her own cost, and gave him a bond. The major presumed he should be her heir, but, all of a sudden, she formed an attachment to a Mr. Fussel, a gentleman much esteemed at Blandford, and of great repute for his legal abilities. A quarrel ensued between the brother and sister; the former with bitter imprecations threatening he would certainly be the death of Mr. Fussel if ever she married him.

These family quarrels soon occasioned a separation between this unhappy brother and sister; and the rupture still increased by mutual complaints between them. She pretended, that he unjustly detained from her much of the stock of the farm, which, either by her father's will, or her own purchase, was lawfully hers; at the same time she denied that ever she sealed the afore-mentioned bond, insinuating, that it was only a forgery of her brother's. The major, on the other hand, cried out as loudly against his sister, accusing her with nothing less than a design to defraud him of part of his estate, besides the money due by the bond. These were the differences, which first fomented a rage that was not to be quenched but by blood.

Soon after their parting, Mrs. Mabellah and Mr. Fussel were married, and the grievances between the brother and sister commenced a law suit; for the prosecution of which, as well as for the carrying on of several other causes which he was employed in, he being a man of great business, Mr. Fussel was come up to London, it being Hilary term, at the unhappy time when he lost his life, in the following manner:—

Mr. Fussel lodged up one pair of stairs, at the sign of the George and Half-Moon, three doors from the Palsgrave's Head Tavern, without Temple-Bar, opposite to a pewterer's shop. He came in one evening between nine and ten, and retired to his study, which fronted the street, sitting behind a desk, with his face towards the window, the curtains being so near drawn, that there was but just room enough left

to discern him. In this manner he had not sat above a quarter of an hour, before two bullets shot from a carbine, struck him, the one through the forehead, and the other in about his mouth; a third bullet, or slug, stuck in the lower part of the timber of the window, and the passage, by which the two former entered, was so narrow, that little less than an inch over or under had obstructed their passage.

He dropped down upon his desk without so much as a groan; so that his clerk, who was in the room at the same time, did not at first apprehend any thing of what was done; till at last perceiving him lean his head, and knowing him not apt to fall asleep as he wrote, he imagined something more than ordinary was the matter. Upon this he drew near, to be satisfied, when he was suddenly struck with such horror and amazement at the unexpected sight of blood, that, for the present, he was utterly incapable of action. As soon as he had recollected himself, he called up some of the family, by whose assistance he discovered what an unhappy accident had bereaved him of his master. Instantly they all ran down into the street, but could see nothing that might give them the least information, every thing appearing, as they conceived, more silent and still than is usual at that time of night, in the public parts of the city. Officers were sent for, and Mr. Fussel's son (for he had been married before) was acquainted with the melancholy news; who immediately made use of all the means he could think of to discover the authors of this horrid fact.

Several places were searched in vain; and a barber, who lodged in the same house with Mr. Fussel, was apprehended on suspicion, he having been absent at the time when the deed was perpetrated.

While they were considering what could induce any body to such an action, young Fussel called to mind those irreconcilable quarrels which had for some time subsisted between his father and his uncle Strangways; and thereupon proposed the apprehending him to the officers, which motion, they, in general, approved of.

They proceeded to put it in execution, and between two and three in the morning, the Major was apprehended in his bed, at his lodgings, over-against Ivy-bridge in the Strand, at the house of one Mr Pym, a tailor, next door to the Black-Bull-inn, which is now Bull-Inn Court.

Being in the custody of the officers, he was had before Justice Blake, before whom he denied the fact, with an undaunted confidence. However, as there was so much room for suspicion, the justice committed him to Newgate, where remaining till next morning, he was then conveyed to the place where Mr. Fussel's body was. When he came there, he was commanded to take his dead brother-in-law by the hand, and touch his wounds before the coroner's inquest, a method mightily relied on by the defenders of sympathy.

But there having been nothing discovered by this experiment, he was remanded back to

prison, and the jury proceeded in their inquiry, though with little hopes of satisfaction. Several ways were propounded by the foreman, for the detection of the murderer; one of which was, that all the gunsmiths in London, and the adjacent places, should be examined what guns they had either lent or sold that day. This, in the opinion of most of the jurymen, was an impracticable task: and one Mr. Holloway, a gunsmith in the Strand, who was one of the number, told them all, that the men of his profession were so numerous, that he thought it next to impossible for them to make such an enquiry without missing many; that, for his own part, he had that day lent a carbine, and did not question but several of the trade did the same every day that passed. This saying of Mr. Holloway's was presently taken hold of by the foreman, who desired him, for the satisfaction of them all, to declare whom he had lent the said piece to: Mr. Holloway, after some small recollection, answered, to one Mr. Thompson, in Long-Acre, who had formerly been a major in the king's army, and was now married to a daughter of Sir James Aston. Upon this, a speedy search was made after Major Thompson, who being abroad, his wife was taken into custody, and detained a prisoner, till her husband should be produced, though she cleared herself very handsomely from having any knowledge of borrowing, or even seeing any such thing as a gun.

Mr. Thompson was that morning gone into the country, on some urgent occasion: but on the first news of his wife's confinement, he returned hastily to London, where, being examined before a justice of the peace, he confessed that he had borrowed a carbine of Mr. Holloway, at the time mentioned, for the use of Major Strangways, who told him, that all he intended to do with it was to kill a deer; and that having loaded it with a brace of bullets and a slug, he delivered it to the said Major Strangways, in St. Clement's church-yard, between the hours of seven and eight at night.

This was all the certain intelligence they could get of what passed before the firing of the gun. Who did the desperate deed was never known; for Mr. Strangways carried that great secret with him to the grave, refusing to confess any thing before man, and reserving this discovery for the general assize hereafter, when the inmost recesses of men's hearts shall be laid open. Thus much farther they learned of Major Thompson, that between the hours of ten and eleven, Major Strangways brought back the gun to his house, left it, and retired to his lodging.

These circumstances were enough to increase the suspicion of the inquisitive jury, and when they were told to Mr. Strangways, he seemed to be struck with terror, so that he continued some moments in profound silence; afterwards he acknowledged in a very pathetic manner, that the immediate hand of God was in the affair, for nothing less could have brought about such a wonderful detection. He farther owned, that the night the murder was committed, he left one at his quarters to

personate him, whom he took care to introduce about seven in the evening, while the people of the house were employed in their necessary affairs, and not at leisure to take any notice of his actions. This friend, he said, walked about the chamber so as to be heard of all the family, which occasioned them to give a wrong deposition, concerning his being at home, when he was examined before the magistrate. He added, that when the fact was committed (by whom, as we have observed already, he would never confess) he returned to his lodging, found means to discharge his friend, then hastened to bed, and lay there till he was apprehended, at three in the morning.

His trial came on at the Old Bailey, when he refused to plead to the indictment, in order that he might preserve his estate from forfeiture. Notwithstanding the exhortations of the Judge, he persisted in his determination; only affirming, that whoever fired the gun, it was done by his direction. He was sentenced to be pressed to death, and was executed accordingly.

OBJECTIONABLE FORM OF OFFICE COPIES OF CHANCERY PROCEEDINGS.

To the Editor of the Legal Observer.

Sir,

OBSERVE that you frequently notice the smaller as well as larger inconveniences in the practice of the law. I trust, therefore, the following remarks will not be deemed beneath your consideration.

It would be a considerable convenience, if the office copies of answers, depositions, affidavits, &c., instead of being copied in the scrambling and slovenly way in which they are, of *one folio per page*, were written neatly in the ordinary form of a brief, so that they might be read immediately by the solicitor with some degree of facility. He is now obliged to wait until they have been transferred—I may say translated—into a more intelligible and collected form.

At the time there was an impost upon every seventy-two or ninety words which were put on the records of a court of justice, there might be some excuse (though I suspect a very bad one) for spoiling a sheet of paper, by distributing a few words over it, for the purpose of affixing a four-penny stamp; but as we are relieved from the fiscal, let us now be delivered from the other grievance.

But then it may be said, the amount of the charge for an office copy is regulated by the number of folios; and to put one folio on a sheet of paper is a convenient mode of ascertaining the length of the whole document. Surely, this is a clumsy process of arithmetic; and, calculating the time of folding the paper, and changing interminably one sheet for another, it would be more advantageous both to the poor scribbler and the fee-taker, if they

were paid by the gross number of words written, instead of the expensive and cumbrous measurement by quires of paper.

In the Common Law Courts the practice, in general, is otherwise, except in the office very appropriately called the Clerk of the *Papers*! "*Papers*," indeed—but where is the law, or the common sense?

I am, Sir,

Your faithful servant,

B.

LORD TENTERDEN.

To the Editor of the Legal Observer.

Sir,

THE authenticity of the information conveyed by your Journal constitutes its greatest value; and any error in facts should be immediately corrected. It is with a view to such correction that I beg to call to your notice, two mistakes in your recent notice of the late Lord Tenterden.

You state that "on the death of Lord Ellenborough, L. C. J., he (Lord Tenterden) was considered to be the best successor that could be found to that eminent Judge." Lord Tenterden (then Mr. Justice Abbott) succeeded to his high office on the retirement of Lord Ellenborough, (see 2 Barn. and Ald. 1.) who lived some months after the appointment.

You are also wrong in stating that Lord Tenterden "undertook the principal situation in the late commission at Bristol," and that "he was observed to be ill at the close of the first day; on the second his illness increased, and he was soon afterwards conveyed to London." Lord Tenterden presided two or three days on the late trial at bar at Westminster, on the prosecution of the Bristol mayor, and there is no doubt the fatigue attending that duty hastened the termination of his valuable life.

I am, Sir,

Your most obedient servant,
T.

SUPERIOR COURTS.

HALLS COURT.

POWER.—SETTLEMENT.

A marriage settlement having empowered the survivor of the husband and wife to appoint to the children of the marriage, and in default of appointment then to the children as tenants in common; and there being two children of the marriage, a son and a daughter, one of them, the daughter, on her marriage, settled her interests. Afterwards, the survivor, in the first settlement, executed the power therein given, and appointed part of the property to the son, and the other part to the trustees of the

daughter's marriage settlement. Upon the trusts thereof, on a bill being brought by the trustee, cestui que trusts, under the settlement of the daughter, to invalidate the appointment made under the first settlement, and to have a moiety of the property settled by the first settlement conveyed to them. Held, that the power in the first settlement was well executed.

By indentures of lease and release, bearing date the 19th and 20th days of February, 1773, being the settlement on the marriage of the Reverend Henry Peckwell and Miss Bella Blosset, both since deceased, the husband conveyed to trustees a freehold messuage, with divers lands and hereditaments in the county of Sussex, to the use of the trustees and their heirs, upon the trusts after mentioned; and by the same indentures, Miss Blossett conveyed to the same trustees a third part of divers messuages, farms, lands, and hereditaments in Ireland, to hold to the trustees and their heirs on the trusts after mentioned. The release then declares the uses and trusts of the Sussex and Irish estates, after the solemnization of the marriage, to the husband and wife successively for their lives, with remainder, in case there should be issue of the then intended marriage *only one child, who should be living* at the decease of the survivor of husband and wife, to the use of such only child, his or her heirs and assigns; but in case there should be two or more children of husband and wife, who should be living at the decease of the survivor of them, to the use of all and every such children, and their several and respective heirs and assigns, in such shares and proportions, and in such manner, and with such benefit of survivorship, during their respective minorities as husband and wife jointly, during their lives, by any deed or instrument, in writing, with or without power of revocation, under their hands and seals, attested by two or more credible witnesses, or as the survivor of them, by any such deed or instrument, under his or her hand and seal, or by his or her last will and testament in writing, should appoint; and for want of such appointment, to the use of all and every such children, their heirs and assigns, as tenants in common, and not as joint tenants, with remainder over. And it is further witnessed, that Bella Blosset assigned her third part in reversion, in a sum of 5000*l.*, to the same trustees, upon trust, to call in the same, and lay it out in the purchase of lands, which should enure to the uses aforesaid. In this settlement there was contained a power of sale of the lands in Sussex, which power was acted on, and the sale produced 4603*l.* 3*s.* 6*d.* The marriage took place, and there were issue two children, namely, Robert, and Selina Mary Peckwell, now Selina Mary Grote, widow, (one of the defendants) living at the decease of the survivor of Henry Peckwell and Bella his wife. Henry Peckwell died previously to the date of the indentures next stated, leaving Bella Peckwell him surviving. By indentures of lease and release, bearing date the 7th and 8th of October, 1793, being the settlement previous

to the marriage of George Grote and Selina Mary Peckwell, it is witnessed, that Selina Mary Peckwell did grant, bargain, sell, assign, and set over unto the plaintiff, husband, and others, a legacy of 1500*l.*, given to her by the will of her father, upon trust to pay the dividends to the husband for life, and then to herself for life, then to transfer the principal to the children of that marriage, as the husband and wife or the survivor should appoint, and in default of appointment, amongst the children equally. And it is further witnessed, that Selina Mary Peckwell granted, bargained, sold, assigned, transferred, and set over her part, share, and interest to which she was entitled in reversion, expectant upon the decease of Bella Peckwell her mother, of and in the hereditaments and premises in the county of Sussex, and of and in the undivided third part of the hereditaments in Ireland; and also all the stocks, funds, monies, securities for money, and other personal estate and effects whatsoever, to which Selina Mary Peckwell was entitled in reversion, expectant upon the decease of Bella Peckwell or otherwise, to hold unto the plaintiff Lambard and others, their executors, administrators, and assigns, upon trust, to invest the same in the public funds, or upon Government or real securities, and to stand and be possessed thereof upon the same trusts as are declared concerning the capital sum of 1500*l.* By a deed poll, bearing date the 23d of December, 1807, Bella Peckwell limited, declared, directed, and appointed, that the undivided third part or share, and all other the parts or shares of Bella Peckwell, comprised or mentioned in the indenture of settlement of the 20th day of February, 1773, of and in the messuages, tenements, farms, lands, and hereditaments in Ireland; and also all and every the lands, tenements, and hereditaments which might be purchased with the sum of 4603*l.* 3*s.* 6*d.*, and also with the said undivided third part or share of the sum of 5000*l.*, in case those trusts in monies, or any part thereof, should be laid out in the purchase of real estate, should, from and immediately after the decease of Bella Peckwell, be and remain to the use of his son Sir Robert Blossett, his heirs and assigns, subject as to the real estate in Ireland to, and chargeable and accordingly thereby charged with the payment thereof, within six calendar months next after the decease of Bella Peckwell, of the sum of 3000*l.* of lawful English money, together with interest for the same from the time of her decease, after the rate of five per cent. per annum, unto the plaintiff Lambard and the other trustee of the indenture of settlement of the 8th day of October, 1793, upon such trusts, and for such intents and purposes, as by the same indenture of settlement were declared and expressed of and concerning the legacy or sum of 1500*l.* therein mentioned, which sum of 3000*l.* Bella Peckwell did thereby direct and declare was to become and be an immediate interest, vested in the last named trustees, upon the execution of the now stating deed poll, and was so appointed and intended to be taken and received in full satis-

fraction of all the share and interest of Selina Mary Grote, of and in the thereby appointed hereditaments and money. And by the same deed poll, Bella Peckwell appointed the sum of 4603*l.* 3*s.* 6*d.* and the third of the 5000*l.*, or so much of those trust monies as should not be laid out in her life time in the purchase of real estates, from and after her decease, unto Sir Robert Blosset as an immediate vested interest. The said sum of 3000*l.* was, shortly after the death of Bella Peckwell, paid to the plaintiff Lambard, who invested it, with other monies, in the purchase of 6057*l.* three and a half per cent stock, which, by a deed poll, bearing date the 4th of September, 1830, indorsed on the settlement of the 8th of October, 1793, was by Selina Mary Grote, who had survived George Grote, and as such survivor appointed in execution of her power to the plaintiffs Joseph Grote, John Grote, Arthur Grote, and Francis Grote, her four younger children, subject to her life interest; and the bill prayed that it might be declared, that the appointment of the 23d of December, 1807, was an invalid execution of the power in the settlement of the 20th of February, 1773; and that the moiety or share to which Selina Mary Grote became entitled, in default of appointment, of and in the said sum of 4603*l.* 3*s.* 6*d.*, the produce of the Sussex estate, or the lands to be purchased therewith, and of and in the said one undivided third part of the messuages, farms, lands, tenements, and hereditaments in Ireland, and of and in the said one undivided third part of the said principal sum of 5000*l.*, or the lands to be purchased therewith, might be settled and assured upon and for such trusts and purposes as were expressed and declared in and by the indenture of settlement of the 8th of October, 1793, and the last hereinbefore stated deed poll of the 4th of September, 1830, concerning the premises therein comprised, or to such uses as should nearest correspond with the same. The question in this case was simply, whether a power of appointing property to a child could be executed in favor of the objects of the settlement, on the marriage of that child, in which she had settled by anticipation the property which she might derive by the execution of that power; the plaintiffs were the surviving trustees of the fund, and the four children of the child claiming under her settlement, and the defendants, were the child herself, and some trustees and other persons who might be interested.

Mr. Tinney, and Mr. Perry, for the plaintiffs, contended, that the power could only be executed in favor of a child; and it having been exercised in favor of other objects, the appointment was void.

Mr. Pemberton and Mr. Sidebottom, for the defendants, cited *Routledge v. Dorne*, 2 Ves. jun. 356; *White v. St. Barbe*, 1 Ves. & Bea. 399; *Alexander v. Alexander*, 2 Ves. sen. 640; *Palmer v. Wheeler*, 2 Bal. & Bea. 18.

Master of the Rolls.—If the person beneficially entitled settles his interest in the property, then the power may be executed in favor of the objects of the settlement. I shall declare

that the appointment of the money, under the circumstances of this case, was a valid appointment. It is substantially the appointment of the child. *Lambard and others v. Grote*, Rolls, 13th June, 1832. M. R.

King's Bench Practice Court.

BAIL.—COSTS OF JUSTIFICATION.

Where bail having made the affidavit required by Rule 3, T. T. 1 W. 4, justify after exception, although the plaintiff does not appear to oppose, the defendant is still entitled to the costs of justification.

Platt applied for the costs of justification of bail. They had made the affidavit required by Rule 3 of T. T. 1 W. 4, and were excepted to by the plaintiff. The bail had now come up, but the plaintiff had not appeared to oppose them. They had accordingly justified.

Littledale, J.—You may have the costs notwithstanding the plaintiff does not appear.

Costs granted.—*Johnson's bail*. Nov. 2, 1832. K. B. P. C.

DISCHARGE OF PRISONER.—COSTS.

*No costs are given on motion for discharging defendants out of custody, on the ground of irregularity, or for reducing the amount of bail to 40*l.*, in pursuance of rule 10 of 1 W. 4, or generally where defendants apply for relief.*

S. Hughes, on a former day, had obtained a rule nisi, to reduce the amount for which bail had been given, from 100*l.* to 40*l.*, on the ground, that the bill of Middlesex, on which the arrest was made, did not specify, in the *ac etiam*, the true cause of action, it not being stated whether the action was on promises, or in debt, &c. He moved this upon rule 10 of 2 W. 4. H. T., and cited *Anon.* 1 Dowl. P. C., 155; and *Green v. Elgie*, *ib.* 344.

Busby now showed cause, and contended that it was the defendant's own fault to give bail for 100*l.*, when he was only bound to give security to the amount of 40*l.*

Littledale, J. overruled this objection, and held the defendant to be clearly entitled to relief.

Busby then objected that the defendant had asked too much, in moving the rule with costs.

Littledale, J.—Certainly;—costs are not in general granted in such cases.

Rule absolute, without costs.

[Upon reference to the master (Mr. Chapman), he stated "that no rule had been made on the subject, but it was the practice not to give costs when a defendant asks for relief." On a subsequent day, (Tuesday, Nov. 13,) upon making a rule absolute, for discharging a defendant out of custody on common bail, on account of his christian name not being stated in the affidavit, *Littledale, J.* refused

costs. *Comyns* showed cause. *J. Jarvis, contra.* And also upon a similar motion, on the ground of the affidavit (which was on a bill of exchange) not stating the amount of the bill of exchange. It should be stated that this last rule was made absolute by consent. *Littledale, J.* expressing an opinion that the affidavit ought to specify the amount, though the forms in the books of practice differed; and he wished that the question might be decided in full Court, if they were not satisfied with his opinion. *J. Jarvis*, in support of the rule. *Comyns contra.* But see *Hanley v. Morgan*, 1 Dowl. P. C. 322, and *Lewis v. Gompertz, ib.* 319, and cases there cited.

Westbeach v. Atkinson, K.B. P. C., Friday, Nov. 9, 1832.

Bankruptcy Court of Review.

BANKRUPT'S ALLOWANCE.

A dividend of ten shillings in the pound having been declared, the bankrupt is not entitled to an allowance of five per cent, to be deducted from that dividend, but to be taken out of the surplus fund; and if there were not a sufficient surplus fund, a less dividend should have been declared, when the bankrupt would have been entitled to an allowance of three per cent.

A dividend of ten shillings in the pound had been declared by the commissioners; and this was a petition presented on behalf of the bankrupt, stating that fact, and praying that the Court would be pleased to order that the assignees of his estate should pay him five per cent. on the net produce of his estate. This application was grounded on the 128th section of the Bankrupt Act, 6 Geo. 4, cap. 16, by which it is enacted, that every bankrupt, who should have obtained his certificate, if the net produce of his estate paid the creditors who had proved under the commission ten shillings in the pound, should be allowed five per cent. out of such produce, to be paid him by the assignees, provided such allowance should not exceed four hundred pounds; but if such produce would not pay such creditors ten shillings in the pound, such bankrupt should only be allowed and paid so much as the assignees and commissioners might think fit, not exceeding three pounds per cent, and three hundred pounds.

The Court decided, that the intention of the act was only to give the bankrupt the allowance of five per cent. in case a dividend of ten shillings in the pound should be paid to the creditors, and there were a sufficient sum remaining to cover this allowance; but as in this case there were not sufficient funds, the commissioners, if they were of opinion that the bankrupt was entitled to an allowance, should have made a less dividend than ten shillings in the pound, in order that there might have been a sufficient fund left to pay him three per cent., or such less sum as they might order. The Court was of opinion, that

the bankrupt was not entitled to have any allowance deducted from the dividend. *Es parte Petherbridge, in re Petherbridge*, 17th Nov. 1832. B. C. R.

SITTINGS IN CHANCERY.

LORD CHANCELLOR.

Thursday,	Nov. 29	| The First Seal.
Friday,	30	} Re-hearings & Appeals.
Saturday,	Dec. 1	
Monday,	3	
Tuesday,	4	| The Second Seal.
Wednesday,	5	} Re-hearings & Appeals.
Thursday,	6	
Friday,	7	
Saturday,	8	
Monday,	10	| The Third Seal.
Tuesday,	11	} Re-hearings & Appeals.
Wednesday,	12	
Thursday,	13	
Friday,	14	
Saturday,	15	| The Fourth Seal.
Monday,	17	} Re-hearings & Appeals.
Tuesday,	18	
Wednesday,	19	
Thursday,	20	| The Fifth Seal.
Friday	21	| Petitions.

VICE CHANCELLOR.

Thursday,	Nov. 29	| The First Seal.
Friday,	30	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Saturday,	Dec. 1	
Monday,	3	
Tuesday,	4	| The Second Seal.
Wednesday,	5	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Thursday,	6	
Friday,	7	
Saturday,	8	
Monday,	10	| The Third Seal.
Tuesday,	11	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Wednesday,	12	
Thursday,	13	
Friday,	14	
Saturday,	15	| The Fourth Seal.
Monday,	17	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Tuesday,	18	
Wednesday,	19	
Thursday,	20	| The Fifth Seal.
Friday,	21	| Petitions.

On Tuesday the 27th, and Wednesday the 28th of November, the Vice Chancellor will sit at Lincoln's Inn, to hear Motions.

SITTINGS AT THE ROLLS.

His Honor the *Master of the Rolls* will not sit again till Wednesday the 5th of December.

COURT OF EXCHEQUER.

SITTINGS IN THE EQUITY COURT.

Saturday, December 1	}	Further Directions, and Exceptions to Reports, and Causes.
Monday, Tuesday,		3 4	} Causes.
Wednesday,	5	} Petitions, Motions, Exceptions, and Causes.
Thursday,	6		} Further Directions, and Exceptions to Reports.
Friday, Saturday, Monday, Tuesday,	7 8 10 11	} Causes. General Business.

SITTINGS OF THE EXCHEQUER OF PLEAS,

At Ten o'Clock.

[Since our last Number, some alterations have been made in the arrangement of business then announced. The following is the latest authentic intelligence.]

Middlesex.

Saturday,	Dec. 1	} Common Juries.
Monday,	3	

London.

Tuesday, <i>Adjournment Day.</i> to	Dec. 4	{ Common Juries.
Tuesday, Wednesday, to	11 12	
Saturday,	15	{ Special Juries.

The entry of Causes, and bringing in Records, for the Adjournment Day in London, closes on Saturday evening, Dec. 1, at eight.

Middlesex.

Monday, to Thursday,	Dec. 17 20	{ Special Juries.
Friday, Saturday	21 22	
		{ Common Juries.

If there should not be a sufficient number

of special juries to make a day's list, on any of the days appointed for special juries, common juries will be added.

NOTES OF THE WEEK.

LAW PROMOTIONS.

THE appointments which we previously announced, of Sir William Horne to the office of Attorney-General, and of Mr. Campbell to that of Solicitor-General, were completed on Monday the 26th November.

ARRANGEMENT OF BUSINESS IN THE EQUITY COURTS.

The Lord Chancellor and the other Judges in Equity have signified, that, for the accommodation of the gentlemen of the Bar, many of whom may be called away (upon occasion of the election) in the second week of December, they would postpone the usual holidays after term in these Courts to that time, and would continue to sit after term, and hold the first seal on Thursday next.

MONTHLY SUPPLEMENT.

The change in our plan, by substituting, in lieu of the Monthly Record, a Supplement, of diminished extent and price, and incorporating the whole (with the exception of the Quarterly Digest of Cases) in one work, has now taken place. The valuable series of Introductory Lectures at King's College, by Professor Park,—the whole of which have been given under advantages not usual in a work of this nature,—are continued in the Supplement for November. Other articles, both of a useful and interesting nature, will be found within "the four corners" of our brief record for the past month; and we trust that we have at length, so far as practicable, adapted all the details of our plan to the various tastes and wants of the profession.

BANKRUPTCY REGISTER OFFICE.

In future, the Register Office in Quality Court will be kept open from ten o'clock in the morning till three o'clock in the afternoon, and from six till eight o'clock in the evening. The only holidays to be kept are Christmas-day, Good Friday, and days appointed for thanksgiving and fast.

REVISING BARRISTERS COURTS.

A correspondent observes, that in our notice of the Revising Barristers Courts (page 65), we stated that "notices *not signed* by the objecting party, but by some one on his behalf, and *recognized by him*, are now sufficient," &c. And he contends, that if we drew this conclusion from the case decided by Mr. Corbett, on the Berkshire Registry, we shall find that the notices there were *signed* by the objecting party in blank, and subsequently filled in, and directed by another party, but without the objector's knowing to whom they were directed, and that the filling in and direction was the only part of the notice recognized; and therefore this case will not support our assertion of the objector's signature not being requisite.

We need only repeat, that a former opinion, by which the signature of the person objecting was held to be necessary, was over-ruled expressly on the ground of the case decided by Lord Tenterden (3 B. & A. 689), that "a notice to quit *by an agent*, and subsequent recognition by the principal, was sufficient." In the case cited, the notice was signed by the agent. This was the principle of the decision, and therefore we think the inference of our reporter a correct one.

BARRISTERS CALLED.

Michaelmas Term, 1832.

INNER TEMPLE.

GEORGE Thomas Williams, Esq.
Sidney Gurney, Esq.
James William Gudge, Esq.
James Marshall, jun. Esq.
Ambrose Waln, Esq.
Adam Bromilow, Esq.
William Robert Ellis, Esq.
Arthur Coyte Paget, Esq.
Herman Merivale, Esq.
Edward Lambert, Esq.

MIDDLE TEMPLE.

Thomas Wm. Tyndale, Esq.
James Pulleine, Esq.
Ambrose Goddard Lethbridge, Esq.
Thomas Webb Greene, Esq.
Wm. Plunkett, Esq.

GRAY'S INN.

Wm. Brown Clark, Esq.
Fred. Fielding, Esq.

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1833.

Clerk's Names.

Aston, Charles, South Lambeth.
Atkinson, Joseph, Carlisle.

Baker, George Edward, Gray's Inn Square.
Baldwin, Richard, 128, Regent Street.

Bathurat, William Blakeway, 24, Mount Street, Whitechapel.

Beckwith, William, jun., Liverpool.

Bell, Edward Cleathing, New Malton, Yorkshire.

Bell, James Preston, Garstang, Lancashire.

Bell, Joseph Copeland, Upper Fountain Place, City Road.

Billing, Edward, 24, Upper Stamford Street, Lambeth.

Birkett, Frederick Blow, Cloak Lane, City.
Bircham, Francis Thomas, Southampton.

Bligh, James William, (no residence entered).
Bore, John Pearson, Much Headham, Hertfordshire.

Bourne, Henry Titus, Alford, Lincolnshire.
Bovill William John, Upper Tooting, Surrey.

Bowen, James Williams, 17, Took's Court, Cursitor Street.

To whom Articled.

Lever, Charles, Gray's Inn.
Hodgson, William, Carlisle.

Croft, Archer Denman, Lincoln's Inn Fields.
Bickerstaff, Robert, Preston, Lancashire, assigned to Christopher Beverley, 1, Verulam Buildings.

Wood, Thomas, 10, Little St. Thomas Apostle.

Eden, John, jun. Liverpool.

Walker, Thomas, New Malton, Yorkshire.

Gardner, John, Sion Hill, near Garstang.

Bolton, William Gillmore, 25, Austin Friars.

Tink, Charles, late of Devonport, Devonshire, deceased, assigned to William Sole, Aldermanbury.

Birkett, John, Cloak Lane.

Gunning, Francis, Cambridge, assigned to John Barney, Southampton.

Wallis, Christopher, Bodmin, Cornwall.

Yarrington, William, Swaffham, Norfolk.

Bourne, Titus, Alford.

Bovill, William, late of Merchant Tailors' Hall, assigned to John Bamber de Mole, of the same place.

Evans, Lewis, Cardigan, Cardiganshire.

*Clerks' Names.**To whom articulated.*

Brandwood, John Townshend, Manchester.	Foulkes, Edward Waller, Manchester.
Brodrigg, Henry, New Inn.	Durant, John, Poole, Dorsetshire.
Brookbank, John, Brighthelmstone, Sussex.	Cooper, Thomas, John Street, Bedford Row, assigned to William Fisher, Red Lion Square, and by him assigned to Charles Brookbank, Brighthelmstone, aforesaid.
Brown, Charles Gallimore, Shiftnall, Salop.	Brown, Gilbert, Shiftnall, aforesaid.
Buchanan, John, Whitby, Yorkshire.	Preston, Robert, Ruscough, Parish of Whitby, Yorkshire.
Buckland, John Albemarle, New Inn.	Barney, John, Southampton.
Buckland, John, Doncaster.	Meeson, Thomas Henry, Blackwell, Doncaster.
Byrom, Edward, Liverpool.	Byrom, Henry, Liverpool.
Carr, William John, Alnwick.	Spours, William, Alnwick.
Chalk, Charles, Great Windmill Street, Hay- market.	Freeman, Thomas, Brighthelmstone, Sussex, assigned to Thomas Hilton Bothamley, Coleman Street.
Chase, Henry, jun., Calcot Green, near Read- ing, Berkshire.	Lamb, George, Basingstoke, Hants.
Corkell, Charles, 2, Judd Street, St. Pancras.	Mitchell, John, Wymondham, Norfolk.
Cooper, Stafford Moore, 56, Welbeck Street, Cavendish Square.	Dolling, George, Chudleigh, Devonshire, as- signed to Edmond George Randall, Wel- beck Street, aforesaid.
Cruttwell, Robert, 1, Charles Street, North- ampton Square.	Maule, John, Bath, and subsequently a pupil with Thomas Platt, Esq. Barrister at Law.
Darbishire, Francis, late of Manchester, now of Tottenham Court Road.	Darbishire, Samuel Dukinfield, Manchester, assigned to Nathaniel Charles Milne, Mitre Court, Temple, and which said Francis Dar- bishire hath served one year of his clerkship with Richard Holmes Coote, of Lincoln's Inn, Barrister at Law.
Davies, Meredith, Merthyr Tydvil, Glamor- ganshire.	Morgan, Walter, Merthyr Tydvil, aforesaid.
Dearden, Josiah, Manchester, Lancashire.	Bagshaw, John, Manchester.
Dickson, Joseph Briggs, Robert Street, Bed- ford Row.	Dickson, William, Preston.
Dixon, George Read, Upper Stamford Street, Surrey.	Dawes, Thomas, Angel Court, Throgmorton Street.
Dyson, Henry William, York.	Shore, Arthur, Scarborough, Yorkshire, as- signed to Thomas Harle, York, and by him assigned to John Waite, the elder, York.
Eaton, William Frederick, 17, Clement's Inn.	Helder, George, 17, Clement's Inn.
Edmondson, William, New Inn.	Berrington, William Morgan Davies, Swansea.
Edwards, Edward Hugh, 9, Lincoln's Inn.	Evans, Thomas, Denbigh, Denbighshire, as- signed to Thomas White, 9, Lincoln's Inn.
Ellery, James Garking, Plymouth, Devon.	Pridham, George, Plymouth.
Elliott, Thomas, Hereford.	Bodenham, Francis, Lewis, Hereford.
Ferns, Thomas Morten, Stockport, Chester.	Winterbottom, J., Kenyon, Lancaster.
Flood, Lake Trapp, Bellevue, Chelsea, Middle- sex.	John William Allen, Carlisle Street, Soho.
Forfar, William Bentineck, Helston, Cornwall.	Roberts, Joseph, Helston, aforesaid, deceased, assigned to Thomas Rogers, of the same place.
Forster, George, Newcastle-upon-Tyne.	Charlton, Edward, Newcastle, aforesaid.
Froude, John Spedding, 1, South Square, Gray's Inn.	Spedding, Anthony, 23, Norfolk Street, Strand, assigned to Francis George Coleridge, Ot- tery St. Mary, Devonshire.
Fry, George, 3, Staple Inn.	Taylor, Robert, 18, Featherstone Buildings.

[To be concluded in our next.]

ANSWERS TO QUERIES.

State of Landlord and Tenant.

DISTRESS. P. 16.

Where lands are let, either for years or from year to year, *prior* to the mortgage, the mortgagee may distrain, or bring an action for use and occupation against the tenants, upon giving notice of his incumbrance. *Moss v. Gallimore*, Doug. 278. Cov. Pow. on Mortg. 176, is *notis*. Cov. Mortg. Prec. 157, n. And it appears from the recent decision of *Pope v. Biggs*, 9 B. & C. 245, that the mortgagee may distrain on the tenants, whether the mortgage be made *prior* or *subsequent* to the demise.

A STUDENT.

LEASE FOR A YEAR. VOL. IV. P. 127.

I think T. P., 4 L. O. 207, and 256; E. F., 223; and J. P., 256, will find, on reconsideration, that a lease for a year is *not* liable to the progressive duty. The Stamp Act, 55 G. 3. c. 184, sched. "Bargain and Sale," regulates the payment of duty on a bargain and sale to precede a release of the inheritance, according to the consideration money expressed in the release; but is quite silent on the subject of progressive duty. In 8 Jarm. Byth. Prec. 209, the editor expresses the following opinion upon the subject: "Leases for a year, being the subject of an express particular stamp, of course are not liable to the progressive duty imposed on deeds 'not otherwise charged.' This point is so clear, that it may safely be acted on, even by those who are generally unwilling to hazard the creation of future subjects for controversy, by ingenious contrivances to avoid present expense."

A STUDENT.

State of Property and Contingency.

DEVISE.—CONTINGENCY. P. 51.

According to the cases *Lodding v. Kime*, 1 Ld. Raym. 208; *Doe d. Brown v. Holme*, 3 Wils. 237; and *Goodright d. Docking v. Dunham*, Doug. Rep. 3d ed. 264; the devise, in this case, subject to the vested estates in J. T. and H. his wife, would, I apprehend, operate as passing several contingent alternate fees to their issue. If they had issue a son (which happened), the remainder would vest in him in fee, on the death of his parents: if they had no male issue, but had issue daughters, it would then vest in them as tenants in common, in fee expectant, as aforesaid. By the birth of a son (who was *in esse* at testator's decease), the remainder in fee vested in him, expectant on his mother's decease; and, *she being a party*, he could now, I apprehend, by suffering a recovery, become absolutely seised of the inheritance in fee simple. There is a difference between this case and those above cited, inasmuch as in *them words of limitation*

were superadded; but in *Roe d. Allport v. Bacon*, 4 M. & S. 366, where there was, as here, only a devise of the testator's estate, Lord Ellenborough said, "Courts have laid hold of the word *estate*, as passing a fee, unless the testator use words of absolute restriction;" which seems to confirm the view I have taken of this case.

H.

DEVISE.—REVERSION. P. 52.

Were the word "*reversion*" actually used in the will of A. B., after the preceding devise of the particular estate to C. D. for life, I apprehend it would carry the fee, or other reversionary interest in A. B.: but in this case, the words "gives the reversion of the same," seem to me to be the language of J. J., and not that of the will; and it is wholly impossible, in a question so loosely worded, indeed without having the *exact words* of the will transcribed, to come to a correct judgment, as to the effect of the devise.

Z. A.

VALIDITY OF DEEDS.—DATE. P. 51.

If a lease be made to commence *à die confectionis*, it will take effect from the day next after the delivery. Co. Litt. 46, b. By analogy to which, it would seem, that a deed executed and delivered on Sunday, Christmas-day, &c. would be *good*, and would commence in interest from the Monday following. I do not find any express decision, either for or against the validity of a deed so executed; but as such a case would only arise in case of illness, or the sudden departure from the kingdom, of a contracting party, the maxim of "*Necessitas non habet legem*," would most probably prevail, were the deed afterwards called in question in a Court of Law.

Z. A.

JOINT NOTE.—SUBSEQUENT SECURITY. P. 51.

The general rule is, that taking security of a higher description, as a bond or judgment, for the money due upon a bill or note, extinguishes the holder's claim upon the bill or note against the party giving that security. 3 Bac. Abr. tit. Extinguishment, (D), p. 106. See more particularly, as to warrants of attorney, *Norris v. Aylett*, 2 Camp. 329. The case therefore being such with regard to the principal, must, *a fortiori*, apply to the sureties.

MANCUNILIENSIS.

QUERIES.

Four Queries.

AFFILIATION EXPENSES.

A. being the reputed father of an illegitimate child born in the parish of B., defrays all expenses incident to its birth and maintenance up to the time of the child being affiliated,

which was upwards of twelve months after its birth. The magistrates, upon the affiliation being made by their order, directed *A.* to pay certain expenses, as incident to its birth, and also for its maintenance, up to the time of the order being made, although the overseer had never been applied to by the mother for parochial assistance, and although the father had actually defrayed all expenses up to the time the order was made. The overseer, *after* the order was made, paid the money to the mother; but as there could be no necessity for his doing so, had the magistrates any right to include such expenses in their order? and if not, is not *A.* entitled to recover back such expenses from the overseer by action, he having permitted the time for appealing to expire?

J. S. T.

State of Landlord and Tenant.

DISTRESS.—LODGER.—BOARD.

A tenant has a lodger indebted to him for board and lodging, the greater part being for board. There are sufficient goods in the apartments to answer the whole amount due; but, of course, they can only be distrained on for the rent. The tenant has no chance of recovering the debt for board by action. Can the landlord enter and seize on the lodger's goods only to the amount due to the tenant for board and lodging? and in the event of an action being brought against the tenant by the lodger for the amount of the seizure, would the former have a good set-off for the sum due for board and lodging?

A. Z.

State of Property and Conveyancing.

PROBATE DUTY.—FOREIGN PROPERTY.

A testator died in 1829, leaving a large personal estate, of which a considerable sum was invested in foreign countries. His executors paid the probate duty on the whole sum, being badly advised; but since the case of *Attorney-General v. Dimond*, 1 Cro. & Jer. 356, they are anxious to ascertain whether they have or not any means of recovering the money so overpaid. A reflection may be excused on the vexation attending inquiries at the Stamp Office, and the manner in which they conduct their business. Surely some check should be set on illiberality. Why is the Crown to pay no costs, when its officers have dealt unfairly? Protection may be reasonable, where unsuccessful actions are so likely to be brought; but on what principle are the mistakes of its officers to be made with impunity?

J. F.

MISCELLANEA.

PRESSING TO DEATH.

THIS dreadful punishment was inflicted, Feb. 1657, on Major George Strangways. The following were the terms of the sentence:—

That the prisoner be sent back to the place from whence he came, and there put into a mean room where no light can enter; that he be laid upon his back, with his body bare; that his arms be stretched forth with a cord, one to one side of the prison, and the other to the other side of the prison, and in like manner his legs shall be used; that upon his body be laid as much iron and stone as he can bear, and more; that the first day he shall have three morsels of barley bread, and the next day he shall drink thrice of the water in the next channel to the prison door, but no spring or fountain water; and this shall be till he dies.

He was attended by the sheriffs, their officers, and some of his friends, who were desired, when he gave the signal, to lay on the weights, and place themselves at the corners of the press. His arms and legs were extended according to the sentence, and on the signal being given, his attendants performed their dreadful task. They soon perceived that the weight they laid on was not sufficient to put him suddenly out of pain, so several of them added their own weight, that they might the sooner release his soul. While he was dying, it was horrible to all that stood by, as well as dreadful to himself, to see the agonies he was put into, and hear his loud and doleful groans. But this dismal scene was over in about eight or ten minutes, when his spirit departed, and left her tortured mansion, till the great day that shall unite them again.

His body having lain some time in the press, was brought forth and exposed to public view, so that a great many beheld the bruises made by the press, one angle of which being purposely placed over his heart, he was the sooner deprived of life, though he was denied what is usual in these cases, to have a sharp piece of timber under his back to hasten the execution. The body appeared void of scars, and not deformed with blood, save where the extremities of the press came on the breast, and upper part of the belly. The face was bloody, but not from any external injury, but the violent forcing of the blood from the larger vessels into the veins of the face and eyes. After the corpse had been thus examined, it was put into a coffin, and in a cart that attended at the prison door conveyed to Christ-church, where it was interred.

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— "Quod magis ad nos
Pertinet, et noscitur malum est, agitamus."
HORAT.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIA- MENT, 1831—1832.

No. VIII.

Criminal Law.

EMBEZZLEMENTS. 2 W. 4, c. 4.

DURING the last Session of Parliament, various changes were effected in the Criminal Law. We shall in the present article point out one of these changes, adopting the order in which the Acts themselves have been passed.

The first Act is intituled, "An Act for more effectually preventing Embezzlements by Persons employed in the Public Service of His Majesty." This is chap. 4, and came into operation on the 13th of February, 1832. The general object of this Act is to assimilate the mode of prosecuting and punishing embezzlements of the public money, chattels, or valuable securities, to that adopted in the case of embezzlements of private money, &c. under the 7 & 8 G. 4, c. 29. §§ 46, 47, & 48. By § 1, the 50 G. 3, c. 59. § 1, is repealed. By that Act, the offence of embezzlement of public money, &c. was constituted a misdemeanor, and made punishable with transportation, but for no definite period; or to the punishments at common law for misdemeanor. The words of the repealed section refer to "any person or persons to whom any money and securities for money shall be issued for public services." The words of the new Act are, "Any person employed

in the public service of His Majesty, and entrusted by virtue of such employment with the receipt, custody, management, or controul of any chattel, money, or valuable security, shall embezzle the same or any part thereof."

It perhaps might appear that the words of the repealed section, as to the persons liable to the penalties provided in the Act, were of a more extensive meaning than those of the present Statute. But on examining the language of the preamble of the former Act, it should seem, that they only applied to the cases provided against by the present Statute. The punishment for such offences under the old Act, is above pointed out; and by § 1. of the new Act, the offence is constituted a felony in *England and Ireland*, and a high crime and offence in *Scotland*, and the offender is rendered liable, "at the discretion of the Court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned with or without hard labour, as to the Court shall seem meet, for any term not exceeding three years." The words above marked in italics are new. The punishment here provided is not exactly the same as that provided by the 7 & 8 G. 4. c. 29. §§ 46 & 47, in cases of private embezzlement. By that Act it is provided, that if the offender be a male he may, in addition to the above mentioned punishments, be once, twice, or thrice publicly whipped. He who embezzles public money, therefore, has some advantage over him who embezzles private money.

The provisions of the present Act only

interfere with those of § 1. of the former Act. The provisions of § 2, which is the only remaining section of that Act as to public officers furnishing false statements or returns, still remain in force.

By § 2. of the new Act, the words "valuable securities" are defined. The second branch of this section, as to the punishment of persons committing embezzlements of such valuable securities, being only a partial re-enactment of § 1, is unnecessary, and calculated to produce confusion in determining the mode in which offenders are to be punished. In order to ascertain the mode in which offenders are to be punished, it was only necessary to define the words "valuable securities;" as they having reference to § 1, would complete the provision as to punishment contained in that section.

By § 3, the provisions of the 7 & 8 G. 4. c. 29. § 48, in cases of private embezzlements, are extended to cases of public embezzlement. By the 7 & 8 G. 4. c. 29. § 48, three distinct offences, if committed within the space of six calendar months, might be charged in the same indictment. It was also necessary to allege the particular money or valuable security supposed to have been embezzled, and the allegation was sufficiently supported if the offender was proved to have embezzled any amount of money, although the particular species of coin, of which such amount was composed, was not proved. So also, it was sufficient to prove that he had embezzled any species of coin, or any valuable security, or any portion of its value, although such piece of coin or valuable security might have been delivered to him in order that some portion of its value should be returned to the party delivering it, and such part should be actually returned. Previous to the present Act, all the difficulties obviated by the 7 & 8 G. 4, c. 29, would have been experienced in prosecuting persons who had embezzled public money.

By § 4, a new provision is introduced, by which it is directed, that the property embezzled may be alleged to be in the King's Majesty.

By § 5, the offender may be punished either in the county wherein the offence was committed, or wherein the party is apprehended. No such provision is contained in the 7 & 8 G. 4, c. 29: but a similar one is to be found in the 9 G. 4, c. 31. § 22, in cases of bigamy, and in the 11 G. 4, and 1 W. 4, c. 66. § 24, in cases of forgery.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XXXVI.

LOST INSTRUMENT.

THE following case is of some practical importance:—

Rotch moved to rescind part of a Baron's order, which directed the defendant's attorney to produce at the Stamp Office, for the purpose of being stamped, an instrument (either a lease or an agreement for a lease). There had been two parts of the instrument executed, but the plaintiff had lost his part. *Rotch* contended, that there having been two parts, this did not fall within the class of cases^a where the Courts have ordered an inspection, the defendant holding it as his own instrument, and not under any trust or duty to produce it. He contended also, that it was confidentially in the hands of the attorney.

Bayley, B.—It is not confidential. We should enforce it from the party himself. The instrument must be produced at the Stamp Office, to be stamped. It is essential to the purposes of justice; for the production of this document unstamped on the trial, would exclude all other evidence. The party does not want to see the instrument, but he wants it to be put into such a condition, as that when produced at the trial, if he has given notice to produce it, he may not be nonsuited by its production.

Vaughan, B.—Where only one part of an instrument exists, a party has no right to an inspection and copy, unless the person who has it in his hands holds it for the benefit of both, or can be considered as a trustee for the party seeking the copy; but where the instrument is not properly stamped, the Court will give every assistance to enforce the production, for the purpose of having the instrument stamped. Here the application is not for a copy or inspection, but merely that it should be produced at the Stamp Office, to be stamped, which must be done at the expense of the party who applies. *Neale v. Swind*, 2 Cro. & J. 278.

DISSERTATIONS ON CONVEYANCING.

No. VII.

ON THE CREATION OF A TRUST OF PERSONALTY FOR PAYMENT OF DEBTS.

"The great division of property *established* by the laws of England, and which ought to be constantly and attentively remembered,"

^a *Street v. Brown*, 6 Taunt. 302; 1 Marsh. 610; *Ratcliffe v. Pleasby*, 3 Bing. 148; 10 Moore, 523; and *Lord Portmore v. Goring*, 4 Bing. 152; 12 Moore, 363.

says Dr. Woodeson, "is into things real and things personal, which are respectively the subjects of very different regulations, and, as it were, of *distinct systems of jurisprudence*;" although but a very superficial knowledge of law is required to yield an unqualified assent to the accuracy of the learned professor; yet as the Chancellor's decision in *Jones v. Scott*, 1 Russ. & Myl. 263, has a tendency to destroy this distinction, it may not perhaps be altogether irrelevant briefly to mention a few of their different peculiarities, in order to shew how extensively our legal system is affected by it.

Without entering upon any dissertation into the origin of property, it may (though merely as introductory) be necessary to observe, that although at the Conquest every kind of property was seized by the Normans, yet land (or immoveable property) alone became the subject of the feudal tenure; that which was personal (or moveable), from its fluctuating nature, being ill calculated to serve either as the sign or the subject of that permanent connection which was the chief object of the feudal institution. To this distinction is ascribed the difference between their legal qualities and incidents, which is exemplified in the right at common law to dispose of personalty by testament, and appoint an executor, who, by virtue of that appointment alone, becomes, in consideration of the law, the testator's general heir, subject, however, to the payment of his debts, and the special trusts of the testament; but nothing passes immediately to the legatee, notwithstanding the legacy may be specific; nor can he take without the assent of the executor; (1 P. Wms. 544; 2 Atk. 598;) who cannot be excluded from taking the personal estate in the first instance, although it may be expressly given to another; 1 Vern. 232; *Ibid.* 302; 2 P. Wms. 148; 1 Lev. 25. This is so clearly understood, that it is a standing rule among conveyancers, "that when a title depends on a testamentary disposition, the executors must be parties, or there must be evidence of assent," the legal title of the executor as representative and constituted heir of the testator, having priority in the eye of the law, for the benefit of creditors, to an express disposition; and if no trust is evidenced, the executor is himself entitled, to the exclusion of the testator's next of kin.

Very different, however, was the policy of the feudal law with regard to *real property*; instead of permitting such a free disposition, even when feuds at length became inheritable, it vested an inchoate title in the heir in right of the ancestor, of which he could not be disinherited, until, by the decline of the system, the Eighth Henry was reluctantly compelled to pass those statutes, under which the right to devise lands is established; from which it appears, that the provision made by law for the disposition by will of these two species of property, is essentially different; the one being the constitution of an heir, the other a disposition from him: the one taking effect at common law, and not requiring any witnesses,—the other by statute, and necessarily requiring

three; the one operating upon all property the subject of it in being, not only at the date of the will, but at the time of the testator's death, and is provable of necessity in the Ecclesiastical Court,—the other is confined to that in being at the date of the will, and when provable at all, (which is rarely necessary) is so in Chancery, the former Court taking no cognizance of real estate, which, in case of intestacy, immediately descends to the heir at common law, whilst the personal estate devolves by statute upon the next of kin; besides which, an executor renouncing probate as to the personal, is not disqualified from executing the trusts created by the same words of the real estate; and the distinction between executors and trustees as to the extent of their authority and liability is well known.

Again, personal estate is held by possession,—real estate by title, of which possession is not even *prima facie* evidence; 13 Ves. 119. And a bequest of personalty for charitable purposes is valid; but such a disposition of an interest in land is within the Mortmain Acts, and void; besides which, the distinction is recognized in the learning on Powers; is clearly distinguished in the Law of Forfeitures, as well as in a variety of instances in the Statute Law; pervades our Law of Legacies; and Mr. Butler, in his notes on the First Institute, says, "That the nature of real and personal estate is so different as to make it almost impracticable to frame such a set of trusts as will, even in the common contingencies, carry them in the same course of devolution;" it is also consistent with the rules of property, that very frequently the same words in the same instrument shall receive a different construction, when applied to real, and when to personal property; but there appeared to be no principle more firmly established than, that the personal estate of a testator in the *hands of the executor*, was, at common law, charged with, and was in fact the natural fund for the payment of his debts, without the aid of a Court of Equity: this being so, it is necessary to inquire how far the circumstances of *Jones v. Scott*, called for a departure from this well known principle. They appear to have been, that the testator (a barrister), by a will *not dated*, but which is stated to have been made in November, 1815, after a recital that he was seised in fee of an estate at Tibberton, devised the same (except the advowson) and all his personal estate, to Rodie and Montague, their heirs, executors, and administrators, upon trust to pay his debts out of his personal estate, if the same was sufficient; and after charging his estate at Tibberton with annuities, he directed, that in case there should be any deficiency of his personal estate for the payment of his debts, the next presentation to the Rectory of Tibberton should be sold; and in case his debts could not be paid off and discharged from all his personal estate, that his real estate at Tibberton should be mortgaged or sold to make up the deficiency; and subject thereto, he devised the estate, in case he should die without leaving issue male, to his daughter for her life, with remainder to her first and other

sons in tail male. The testator dying in July, 1816, Roden proved the will, and dying in 1818, the husband of the testator's daughter, she not then having attained twenty-one, took out administration *de bonis non*, with the will annexed. In 1819, on her attaining majority, administration was granted to her; and in 1822, she guardedly advertised for creditors; and in compliance therewith, the plaintiffs transmitted their account, which had been ascertained in 1815, of which no notice was taken. It further appears, that the testator's supposed general personal assets being found insufficient for the payment of his debts, steps were taken to sell the Tibberton Court estate, when it was discovered that the testator's interest therein was leasehold, and that in October, 1822, the estate was sold. In July, 1823, the plaintiffs commenced an action against the administratrix and her husband; and upon their pleading the Statute of Limitations it was discontinued; upon which, in 1824, the plaintiffs filed their bill on behalf of themselves and the other creditors of the testator, praying, amongst other things, that the trusts thereof for the payment of his debts might be carried into execution; to which the defendants, by their answers, insisted that the Statute of Limitations was a bar to the relief.

Confining these observations to what appears in the report, it is submitted that this judgment is open to doubt. The principal question appears to have been, whether what is termed "the devise of the Tibberton leasehold in trust, would prevent the Statute of Limitations from running against the plaintiff's debt." And it was contended at the Rolls, "that a trust or charge created by will for the payment of debts, prevents it from running against such as were not barred in the testator's lifetime;" and *Burke v. Jones*, 2 V. & B. 275; *Hughes v. Wynne*, 1 T. & Russ. 307; and *Hargraves v. Mitchell*, 6 Mad. 326, were cited in support of this undisputed proposition. It is submitted, however, that these authorities were not strictly applicable, the real question being, *whether any trust or charge was created at all?* Having, however, assumed a trust by the will, it was contended, that "the consequence which followed, was not dependant upon the nature of the property; and that whether that was real or personal was immaterial." Now, although it is admitted that the cases cited are authorities for the proposition itself, it is submitted, that they do not authorise the conclusion drawn from it. In *Burke v. Jones*, and *Hughes v. Wynne*, there was a trust created, there being a devise; and the only question was as to its operation; and in *Hargraves v. Mitchell*, in which the question was, "whether there was any difference between a charge and a trust," his Honor the Vice-Chancellor said, "The Statute of Limitations does not run against a trust; and a charge is a trust to be exercised by the devisee or heir. A trust for payment of debts, in aid of the personal estate, applies only to such debts as the personal estate, if sufficient, would be bound to pay; but the personal estate is not bound to pay debts barred by the Statute of Limitations."

The observations of the defendant's counsel, "that if the Tibberton Court estate had been freehold, the authorities cited would have applied; and that the leasehold would necessarily vest in the executors, as the personal representatives, to be applied by them towards the payment of his debts," included every thing that could be urged upon the general question; whilst those in the reply, that the plaintiffs "were not questioning the rights of the executor, or lessening the rights of the creditors against the executors, and the assets leaving them untouched; but asserting that the creditors have also equitable rights against the trust fund which the testator has created," not only appear more ingenious than solid, the trust fund alluded to being only imaginary, but really appear to be begging the question. His Honor, however, did not allow the plaintiff the benefit of any unnecessary equitable claims; but determined the question upon the broad distinction alluded to by Dr. Woodeson, and dismissed the bill with costs.

Upon appeal, however, the plaintiff's counsel, in argument, stated that "the creation of a trust, or even of a charge upon freehold estate, prevents the statute from running." Undoubtedly it does, inasmuch as a charge, which the learned counsel admitted to be something inferior to an ordinary trust, brings a fund into operation, which by law is not answerable for debts, and otherwise confers a benefit upon creditors in its administration. In the principal case, there was no such additional, and the existing fund was distributable as legal, and not as equitable assets. His Lordship, in his judgment, said, "The debt was not barred at the decease of the testator; but it was so barred before any suit was commenced, the suit for its recovery being brought after six years had elapsed from the death of the testator."

It is, however, respectfully submitted, that his Lordship's inference is open to controversy; the case of *Murray v. East India Company*, 5 B. & Ald. 204, having decided that the statute ceases to run against an administrator, until administration granted, on the ground, that till then there is no person capable of suing; and in 10 Ves. 93, it was held to be the true meaning of the statute, that the party should have six years open to him to prosecute his claim. These authorities, it is submitted, are applicable *vice versa*, and that the statute is not spent if there be not, for the whole period of six years, a person capable of being sued. The report, however, does not furnish sufficient data for calculation, although upon this view of the statute's operation, it *prima facie* shews, that the statute had not run when the action was commenced in 1823.

His Lordship then proceeded to observe, "that the question was, whether the words, 'after payment of all my debts,' charging them upon the real estate, changed the nature of the property and of the claim, converting what was before a debt into a trust, and the creditor into a cestui que trust, and making the executor a trustee for the satisfaction of the demand; or whether, in another view, it was such a decla-

ration of intention as amounted to an expression of the testator's will, that all his debts should be paid without regard to the Statute of Limitations."

First, as to the conversion of the fund, it is admitted, that a Court of Equity exercises a magical operation upon real, by converting it into personal estate. Here, however, there does not appear to have been any ground for its application, as the fund was originally of the quality into which it has always been the object of the Court, by an application of its principle to convert it, there being innumerable instances of the conversion of real into personal estate, as well by the direction of the testator as the construction of the Court; but regard has always been had to their original character in their distribution; and the claims of creditors and representatives have been marshalled accordingly: but there does not appear to be an instance of a constructive conversion of personalty; or where creditors have not had the benefit of an additional fund for their payment, whenever the principle of conversion has been resorted to.

Secondly, as to the changing the nature of the claim, by converting the debt into a trust, and making the executor trustee. In *Trent v. Hamling*, 10 Ves. 459, Lord Eldon's opinion was, that there was no provision for creditors by the words "my just debts being previously paid," if the trustees are to be considered trustees merely in the sense of the Ecclesiastical Court, that is, as executors." And in *Wentworth's Executors*, p. 4, it is said, and there is no doubt upon the point, that the naming executors is, by implication, a gift to them of all the testator's personal estate, and the laying upon them an obligation to pay all his debts, and making them subject to every man's action for the same. And in *Sturt v. Meltish*, 2 Atk. 612, Lord Hardwicke defined a trust as "such a confidence between parties, that no action at law will lie, but is merely a case for the consideration of a Court of Equity." And in *Hull v. Knodell*, Mosely, 328, the Master of the Rolls denied that an executor or administrator is a trustee by his office, for then he would be accountable only in a Court of Equity, and not at Law." And in 3 Atk. 96, Lord Hardwicke said, "there is an established difference in this Court, between an executor and a trustee; besides which, that only can be considered as trust or equitable assets which the testator has made subject to his debts generally, and which, without his act would not have been so subjected."

From these authorities, therefore, and from the facts of *Jones v. Scott*, it does not appear that there is any thing in the case from which a trust could be implied; mere mistake of supposing the Tibberton property to be real instead of personal estate, not altering or prejudicing the rights of creditors, nor in any way affecting those of the executors, who take by the law and are bound by it in the disposal of their testator's estate. And in *Hovenden v. Lord Annesley*, 2 Sch. & Lef. 630, Lord Redesdale held, that Courts of

Equity were bound to yield obedience to the Statute of Limitations upon all legal titles and legal demands, and cannot act contrary to the spirit of its provisions; their discretion being to be exercised in no case to the contradiction of overturning the grounds or principles of law; 1 P. Wms. 753; so that this is merely the case of a plaintiff who has disabled himself by laches from proceeding at law, and, therefore, is not entitled to the assistance of a Court of Equity, *Congreve v. Poyer*, 1 Mol. 121, by having a trust raised in his favor; it appearing from *Cook v. Fountain*, 3 Swanst. 592, that, with regard to trusts, "there is one good general and infallible rule that never deceives, a general rule, to which there is no exception, and that is this: the law never implies, the Court never presumes a trust, but in case of absolute necessity. The reason of this rule is sacred; for if the Chancellor do once take liberty to construe a trust by implication of law, or to presume a trust unnecessarily, a way is opened for him to construe or presume any man in England out of his estate."

It is submitted, that no such necessity was apparent in *Jones v. Scott*. But his Lordship put the question in another shape; as—whether there was such a declaration of intention as amounted to an expression of the testator's will that all his debts should be paid, without regard to the Statute of Limitations." It is clear, that there is not any thing expressed, which in any way favors this view of the case; and, therefore, it rests upon presumption, and that too in favor of a plaintiff who has, evidently, been negligent; but it is generally understood that to support a presumption, either at law or in equity, the circumstances must not only be reasonable, but according to law. Can they be reasonable in the present case, which is that of a barrister making his will without informing himself of the tenure of his property, and without even dating it—circumstances which were both necessary to his making a reasonable and satisfactory disposition, and the existence of which evinces a thoughtlessness, regard being had to the professional character of the testator, not at all in favor of a special reference to the Statute of Limitations, which must be presumed to be present in the mind of the testator at the moment of his signing his will, when it does not appear that there was then any debt against which the statute had run; so that, to perfect the presumption, the testator must be presumed to know the events which would happen after his death: true it is, that in the late case of *The King v. The Inhabitants of Upton Gray*, a dictum of Sir W. Grant was cited, wherein he is represented to have said, "that presumptions did not always proceed on a belief that the thing presumed has actually taken place;" "but if he did so express himself," says Mr. J. Bayley, "I can only say, that I shall never agree to the doctrine, at least so far as to presume that which I believe not to have been the fact." His Lordship, evidently, doubted the dictum; and it is consistent with the dignity of the Bench, which regards law as a science, to discourage such theories to the uttermost.

The presumption, too, in *Jones v. Scott*, to be availing, must be against the express provisions of an act of parliament. His Lordship, in order to get rid of the objection, that the direction to pay, and the bequest was void, said, "I hold it to be one thing for an act to be merely nugatory; another, and a very different thing, for such an act to be wholly illegal and void. When a person merely orders that to be done, which, if he had not so ordered, the law would have done for him, he does not come under the description of giving a direction which is void, as being *contrary to law*." Referring to the last member of the sentence, it may be said, certainly not; the direction in *Jones v. Scott*, so far from being contrary to, is in exact conformity to the law; and upon that ground it is submitted, that though conformable, yet being subordinate to the rule of law, it is merged in, and is extinguished by it. In *Harewood v. Pope*, 3 P. Wms. 322, Lord Chancellor Talbot said, "Here the testator gives his personal estate to his executors, which is no more than the law does, which is LIKE GIVING THE REAL ESTATE, to the heir, which is void;" and in Hob. 30, it was determined, "that a devise of land to the heir, being just the same that the law gives, is utterly void and idle; and that the rest of the devises must proceed as if that had not been spoken before. In the 4 Hen. 6, and 2 & 3 Ph. & M., Dyer, 124, it was in like manner resolved, that "a devise made to the son and heir is utterly void;" and in *Hedges v. Rowe*, 3 Lev. 127, "that a devise, giving lands as the law would give it in case there was no devise, is inoperative and void;" besides which, in the *Earl of Thomond v. M'ney*, 3 Swanst. 209, Lord Hardwicke said, "The question is, whether Lady D., who devised to her heirs at law, with particular interests," subject to such incumbrances as they are now charged with, "has thrown the burthen of these incumbrances upon the estate; and upon the best consideration I can give this matter, I do not think the words can have that operation; and if I were to be of that opinion, I think it would be of very dangerous consequence;" and in 210, after briefly recapitulating the facts, his Lordship said, "he thought these words were such as the law would have supplied, and therefore nugatory;" and Lord Camden, in p. 218, said, "I am, upon the whole, just as clear as Lord Hardwicke was, that the will made no alteration."

It has been said, that the leaning of the Courts is towards the doctrine of conversion and the raising of trusts; unfortunately, it is so, to the increase of litigation, which is the cause of great expense to the parties interested, and the means of bringing the profession into disrepute; such will undoubtedly be the case, unless the law is to be regarded chiefly as a science, and to be supported by an adherence to established and defined rules and maxims; its members, perhaps, might not increase, but they, as well as the law itself, would soon be much more respected.

C. S.

REVIEW.

A Practical Treatise on the Law concerning Lunatics, Idiots, and Persons of Unsound Mind; with an Appendix of the Statutes of England, Ireland, and Scotland, relating to such Persons, and Precedents and Bills of Costs. By Leonard Shelford, Esq., of the Middle Temple, Barrister at Law. Sweet, and Stevens and Sons, 1832.

A TREATISE on the Law of Lunatics has been much wanted for some time. The cases and statutes relating to this branch of the law have been gradually accumulating since the work of Mr. Collinson in 1812, and they wanted condensation and arrangement. The task could not be considered as very difficult. The proper division of the work had been already pointed out, and all that was required was a sufficient share of industry and judgment to collect and distribute the recent matter on the subject. Under these circumstances we were rather surprised to see a work so bulky in size as Mr. Shelford's put into our hands, and we cannot altogether acquit the learned author of some tendency to book-making. Thus, he gives us an appendix of three hundred pages, the contents of which, we think, were very susceptible of abridgment; one hundred pages are filled with the statutes relating to the subject at full length; and nearly thirty more with precedents, many of which are to be found in all the popular collections of forms. He has also thought it necessary to commence the work by an introduction of sixty pages in length, on the "nature of insanity," "principally selected from medical writers," in which we are favoured with the learned author's opinions on the faculties of the human mind, and with large extracts from his common-place book, in the shape of quotations from the familiar medical works on insanity, variegated by the poetry of Dr. Armstrong and Lord Byron, and leaving us at the end, we are very much afraid, nearly as well informed on the subject as at the beginning. This disquisition, we must say, appears to us wholly out of place in a "practical" treatise; and we have made these observations inasmuch as we are determined to neglect no opportunity of pointing out and preventing, as far as in us lies, all unnecessary expense of legal works.

Having thus disposed of the integuments, we shall proceed to examine the corpus of the work; and this part of the learned author's labours appears to us to show very

considerable care and research, and that time has been bestowed upon it. We shall not give a detailed account of the arrangement adopted, which differs in no striking point from that before adhered to by other writers; but we shall mention some of the parts of the work which appear to us to deserve particular attention; and we shall first notice some few mistakes and omissions which have escaped the author. Thus, the office of Clerk of the Custodies of Lunatics is mentioned as an existing office (p. 27), but it is not stated that it is now abolished after the 20th of August, 1833, by the 2 & 3 W. 4. c. 111. So also, in stating that the Barons of Exchequer in Scotland exercise a jurisdiction in lunacy (p. 30), it should have been mentioned that the Court of Exchequer of Scotland is now abolished by the 2 W. 4. c. 54. Chapter III. on the Evidence respecting Insanity, seems to us to be a good deal "made up;" and, if we recollect right, the proper authorities are not always cited. The language of a mere law-book is generally sacred from criticism; if it were not, we should accuse the author of some ambition of fine writing, and of wandering into useless description. It seems to us quite idle to attempt to excite sympathy from the lawyer by a law-book—to "draw iron tears down Pluto's cheek."

There are other parts of the work, however, with which we have no fault to find. The chapter on the jurisdiction respecting idiots and lunatics, is full of valuable information; and those relating to actions and suits by and against lunatics, will be found useful to the practitioner; and that on crimes committed by lunatics, is of considerable interest.

In conclusion, we have only to say, that if the work had been about half its present size it would have been twice as useful; as it is, we do not think it will become very popular. We shall now enable our readers in some degree to judge of the work for themselves, by giving an extract from the chapter on the disqualification of lunatics for the performance of public duties, which we select as being of some general interest.

"When a monarch of this country, through mental incapacity, has become incapable of administering the executive power with which he is intrusted, the constitutional method of providing for the temporary interruption of the exercise of the royal authority, is the appointment of a Regent by the two Houses of Parliament^a. On the illness of George the Third

being reported to Parliament, a select committee, consisting of twenty-one members, was appointed by each House, to examine the physicians who attended him during his illness, touching the state of his health, and to report such examination to the House^b. After the examination of the King's physicians, committees were in like manner appointed to examine and report precedents of such proceedings as might have been had in the case of the personal exercise of the royal authority being prevented or interrupted by infancy, sickness, infirmity, or otherwise, with a view to provide a remedy for the same^c. When the insanity of George the Third had been established by medical evidence, it was reported by the committees of the two Houses of Parliament, that for the purpose of providing for the exercise of the royal authority during the continuance of his Majesty's illness, in such manner and to such extent as the circumstances and the urgent concerns of the nation required, it was expedient that his Royal Highness the Prince of Wales, being resident within the realm, should be empowered to exercise and administer the royal authority according to the laws and constitution of the United Kingdom, in the name and on the behalf of his Majesty, and under the style and title of Regent of the Kingdom, and to use, execute, and perform, in the name and on the behalf of his Majesty, all authorities, prerogative acts of government, and administration of the same, which belong to the King of this realm to use, execute, and perform, according to the laws thereof^d. A Regent was afterwards appointed during the incapacity of George the Third^e.

"Persons deaf and dumb, or blind, or idiots, or madmen, are disqualified for being chosen members of Parliament^f, but lunatics in lucid intervals are eligible, for the lunacy may never return; but if it should, and be duly reported to the House, there is a precedent for declaring such lunatic's seat vacant^g. When a member of the House of Commons

imbecility of Hen. 6. See Hallam's *Middle Ages*, 2 Vol. 401, 4to edit; 3 Vol. 282, 8vo. edit.; *Ling. Hist. of England*, 3 Vol. 474.

^b Lords and Commons Journal, 8th Dec. 1788.

^c Lords Journal, 12th Dec. 1788, and Commons Journal, 10th Dec. 1788.

^d Lords Journals, 4th Jan. 1811; Commons Journal, 2d Jan. 1811. The precedents of proceedings in cases where the exercise of the royal authority has been prevented by sickness, &c. are reported in the Lords Journals, 17th Dec. 1788; Commons Journals, 12th Dec. 1788.

^e See Statutes 51 Geo. 3. c. 1; 52 Geo. 3. c. 6, 7, 8; Parliamentary Debates, 1788 and 1789; March 1810, Vol. 18. Cobbett's Parliamentary Debates. See 1 Will. 4. c. 2.

^f 1 Whitlock's Notes on the King's Writ, 461.

^g D'Ewes Journal, 126. See Male on Elections, p. 34; 1 Roe on Elections, 113.

^a In the year 1454 a Regent was appointed on account of the derangement and mental

becomes insane, the practice of Parliament is not to discharge a member from his service on account of his being afflicted with a curable disease, but the House appears uniformly to have inquired into the nature of the alleged malady, and to have granted or refused a new writ, according as there seemed to be a permanent or temporary incapacity in the member previously returned^h. On the petition of three of the registered freeholders of the county of Wexford, on behalf of themselves and other freeholders, setting forth the election of two members to represent the county in Parliament, and that they afterwards took their seats; and that one of such members in some time after such election and return, became afflicted with a mental malady, and that a commission of lunacy had been issued, under which such member had been found a lunatic; and that in consequence of such event the petitioners submitted to the House that the said county of Wexford ceased to be represented in Parliament, because by the laws and constitution of the United Kingdom it was established that there should be two knights to represent such county, of which valuable privilege it was in fact deprived, by the confirmed insanity of such member; and praying the House would order a new election to be had to fill the seat of such member, and for that purpose that a new writ might be issued to the sheriff commanding him to return a knight to represent the petitioners and such county in Parliament, in the place of the insane member. It was ordered to be referred to the committee of privileges to examine the subject matter of the petition, and that they should report the same, with their observations thereupon, to the Houseⁱ. The committee reported, that the fact of the member's lunacy having been established by the production of an inquisition of a jury, taken upon a commission of lunacy, under the Great Seal of Ireland, they had proceeded to inquire into the allegation of the petitioners, that there was not the slightest hope that he would recover; and having examined the medical attendants and the keeper of the house in which the member was confined, they were of opinion, that the member's malady, though severe and aggravated by its long continuance, could not at present be considered incurable. That the committee had endeavoured, in the next place, to ascertain what had been the law and practice of Parliament in similar cases. In the course of such investigation, the committee had been unable to discover any sufficient authority for discharging a member from his service in Parliament on account of his being afflicted with a curable disease. It is true, that the writs issued by Edward the First, in the twenty-eighth year of his reign, direct the sheriffs to summon those who had been elected for the Par-

ment holden in the preceding Easter, and in all cases where the persons so elected should be prevented, by death or infirmity, from attending, to elect others in their room. It is also stated in Brooke's Abr.^j, that similar writs were issued in the thirty-eighth year of Henry the Eighth, without making any distinction between illness curable and incurable; but it must be recollected, that at those periods, the session of Parliament was usually of so limited a duration, that it might reasonably be presumed that any severe illness, however short, would incapacitate a member from attending. In subsequent cases, the House appears uniformly to have inquired into the nature of the alleged malady; and to have granted or refused a new writ, according as there seemed to be a permanent or temporary incapacity in the member previously returned^k.

"Idiots and lunatics are incapable of voting for members of parliament, although they possess the other necessary qualifications; but if, during a lucid interval, a voter be capable of declaring his vote and repeating the oaths which may be required of him, his vote ought not to be rejected^l.

"If a beneficed clergyman becomes of unsound mind and incapable of performing his parochial duties, his living is not vacated, but the bishop of the diocese will provide for the service of the church by appointing a curate, who will be paid out of the profits of the living, and sequestrators will be chosen for collecting the tithes during the incapacity of the incumbent. Sequestration is usually granted by the bishop to the churchwardens of the parish, who enter into a bond for recovering the tithes and accounting for them^m."

ON PROFESSOR PARK'S REMARKS ON LAWYERS' BILLS OF COSTS.

[We have received a communication on the subject of some observations which fell from Professor Park in his Introductory Lecture at King's College to the Course on the Practice of Conveyancing, which we have somewhat modified in expression. We trust our correspondent will be satisfied with the alterations which we have made in the exercise of the discretion entrusted to us.]

To the Editor of the Legal Observer.

Sir,

I make no apology for offering some observations on a passage in the Lecture of Profes-

^j Tit. Parl. s. 7.

^k Journals of the House of Commons, 2 April, 1811, p. 687.

^l See Heywood's Law of Elections, 293, 2d ed.; Orme's Digest of Election Laws, 103. See 2 Will. 4, c. 45, §§ 19, 20, 26, 27.

^m Burn's Eccl. Law, Vol. 2, p. 339, 340; Vol. 4, p. 3; Watson's Cl. L. 309.

^h See Journals of House of Commons, April 2, 1811, and Appendix thereto, p. 687.

ⁱ Journals of the House of Commons, 2nd April, 1811, p. 226.

sor Park, introductory to his Course on Conveyancing, to which you have given publicity in your new Supplement. His remarks evidently apply to my professional brethren, as solicitors, and are calculated, I think, to continue a false and injurious impression under which that branch of the profession has long labored. I thought this had been so far removed that no public lecturer would have felt himself justified in attempting to revive it. It is, I admit, difficult for an ambitious speaker to abstain from raising a laugh and enlivening the attention of a dull auditory, when it can be obtained at so cheap a rate as by a sly comment on a lawyer's bill—time out of mind the favorite butt on the stage and in debating clubs.

According to your report (p. 72 of the "Supplement for November,") the learned Professor—contrasting the disadvantages of a *landed*, compared with a *funded* proprietor—says, "it is scarcely possible that he can have even 500*l.* a-year in landed property without considerable familiarity with *lawyers and their bills of costs*. By a singular fatuity, too, of this country, that portion of law business which *most peculiarly needed it*,—conveyancing and landed property agency—has been, to a great extent, exempted from the severe restraint imposed on the other portions, by what is called *taxation of costs*. It has been left to creep on gradually and insensibly, at the mercy of human nature, with all its *cravings and infirmities*, till lawyers and landed proprietors have come to be represented, *not without some justice*, as pikes and gudgeons." This, of course, was followed by a pleasant movement of the risible faculties of "the million." I was present at the delivery of this lecture, and though otherwise highly gratified by the learning, talent, and philosophy (the latter a rare quality) which it displayed, I could not but feel offended at the *flippant and unjust* remarks which are here insinuated. I say

"insinuated," for if they are well founded, they ought to have been plainly and boldly stated.

"A *lawyer's bill of costs*," which the Professor thinks "*peculiarly needs taxation*," and especially in conveyancing agency, to save the client from "*the cravings and infirmities of human nature*," will be found, when dissected, to consist of considerable payments made to functionaries whose charges are not liable to taxation, nor even to the slow and expensive assessment of a jury. A lawyer's bill is a compound of many items—few of which go unreduced into his own pocket. His receipts, in many cases, do not more than reimburse his advances, which consist of stamp duties, fees to counsel, fees for searches, fees for office copies, &c. &c.—to say nothing of the necessary expenses of his professional establishment. When he receives his bill he scarcely gains more than interest for his advances; and when he does not receive it, he sustains the loss of time, as well as the outlay of money.

It may be supposed that this notice is uncalled for, and that I am needlessly vindicating my brethren. I do not think so. The fashion has long enough been to ascribe all the expense and delay in the administration of the laws to attorneys and solicitors; and whenever a statute or a rule of practice has been made or altered, the general practitioner has suffered by it. It is too generally supposed he can well bear it; and certainly the supineness of the profession to its own interests, might well warrant the supposition, that its members possessed such abundant advantages, it is scarcely possible to take them all away. I shall, however, watch the progress of these inroads on the rights and interests of my professional brethren, and, with your permission, expose them.

I am, Sir,

Your obliged servant,

L. S.

ATTORNEYS TO BE ADMITTED,

Hilary Term, 1833:

[Continued from p. 98.]

Clerks' Names.

To whom articulated.

George, William, 7, Wells Street, Gray's-Inn Road.

Smith, Edwin, Leeds, York.

Gibson, Charles, 64, Lincoln's-Inn Fields.

Gibson, Jasper, Hexham, Northumberland.

Gill, John, 78, Upper Thames Street.

Perry, Wilson, Whitehaven, Cumberland, assigned to Thomas Saunders, Queen Street Place, Southwark.

Glover, William, 34, Penton Place.

Glover, Henry, Bolton-le-Moors, Lancaster.

Grantham, Wilkinson, 25, Villiers Street, Strand.

Sellwood, Henry, Horneastle, Lincolnshire.

Gregg, Edward William, Sneinton, near the Town of Nottingham.

Shilton, Caractacus D'Aubigny, Sneinton, *aforsaid*.

Gregory, William, the younger, 2, Bury Place Bloomsbury.

Edwards, Joseph, Truro.

Gregory, Edward, Woodford, Northamptonshire.

Gregory, Dixie, of Ellesmere, Salop, deceased, assigned to Alfred Umney, Chancery Lane.

*Clerks' Names.**To whom articulated.*

Gregson, William, 3, Denmark Row, Cold-harbour Lane, Camberwell.
 Green, Charles Price, Warwick Court.
 Greenway, Edward Kelynge, 13, New North Street.
 Hall, Horatio William, 5, Philpot Terrace, Edgware Road.
 Harding, George Joseph, Solihull, Warwickshire.
 Hartley, Francis, Bath Place, Peckham, Surrey.
 Harle, William Lockey, Newcastle-upon-Tyne.
 Harris, Francis Lloyd, New Square, Lincoln's Inn.
 Harrison, Joseph, Whitehaven, Cumberland.
 Hatherley, John, 5, Great Marlborough Street.
 Hedges, John Kirby, Wallingford, Berkshire.
 Heelis, J., Burnley, Lancaster.
 Hefill, H. the younger, Norwich.
 Hellings, Thomas, the younger, Tiverton, Devonshire.
 Hembery, Joseph Henry, 37, Watling-street.
 Henderson, John, 18, Fitzroy-row, Fitzroy Square.
 Hill, Henry, Gray's Inn.
 Hill, Henry, 20, College Hill, City, London.
 Hillyard, Charles, Upper Clapton, Middlesex.
 Hinchcliffe, Rob. B., 31, Sidmouth Street, Regent Square.
 Hoad, Henry, New Inn.
 Hoon, J. Acraman, Bishop Street, Bristol.
 Holcroft, William Francis, No. 11, Everett Street, Brunswick Square.
 Holloway, Richard, Southampton Buildings.
 Holt, Thomas, 2, Northampton Place, Clerkenwell.
 Homer, Robert Wilson, now of Reading, Berkshire.
 Horsfall, Abraham, Leeds, Yorkshire.
 Horsley, Charles, Inner Temple.
 Hudson, John Godfrey Bellingham, 132, Oxford Street.
 Hutton, Henry George, Lincoln's Inn.
 Hyde, John, Saville, Loughborough, Leicester.
 Ibbotson, Henry, the younger, Liskeard, Cornwall.
 Ibell, Wm. Wright, 14, Waterloo-place, Pall Mall.
 Igna, Richard, 15, Kenton-street, Brunswick Square.
 Irlam, William, Liverpool.
 Judgson, George Mark.
 Jackson, Fras., Kidbrooke Lodge, Blackheath.
 John, William Henry, Truro, Cornwall.
 Jones, William, the younger, late of Glanbenno, of Ruthin, Denbighshire.
 Kearns, William Mosson, 7, Cumberland Place, New Road.
 Keir, James, 18, Great Coram Street, Bloomsbury.

Bury, John, Bewdley, Worcestershire.
 Green, Richard, Knighton, Radnorshire.
 Greenway, George Cattell, Warwick.
 Carlon, John, Chancery Lane.
 Harding, Joseph, Solihull, assigned to Thomas Hunt, Stratford-on-Avon, Warwickshire.
 Glubb, Peter, Liskeard, Cornwall.
 Adamson, John, Newcastle, aforesaid.
 Lloyd, Henry, Ludlow, Salop.
 Walker, M. Whitehaven, aforesaid.
 Tucker, Robert, Ashburton, Devonshire, assigned to Edward Pain, Great Marlborough Street.
 Hedges, John Allnutt, same place.
 Buck, Anthony, the same place.
 Brightwell, Thomas, Norwich.
 Hellings, Thomas, the elder, Tiverton, aforesaid.
 Vincent, George, Bedford Street, Bedford Row.
 Gunnery, Joseph, Liverpool, assigned to W. Thompson, also of Liverpool.
 Williamson, James, Gray's Inn.
 Scott, John, St. Mildred's Court, Poultry, assigned to John Edmund Scott, same place.
 King, George Hillyard, Token-house Yard.
 Nicholson, Peter, Warrington, Lancashire.
 Martin, James, Battle, Sussex.
 Heaven, Cam Gyde, Bristol.
 Blunt, Joseph, the younger, Liverpool Street.
 Aplin, Benjamin, Banbury, Oxfordshire, and Furnival's Inn.
 Stone, Daniel, 5, Castle Street, Holborn.
 Greene, Anth. Sheppey, Brighton.
 Codd, G. Kingston-upon-Hull, assigned to John Hawkins, New Boswell Court, Carey Street, and by him assigned to John Atkinson, the younger, Leeds.
 Duckworth, William, Manchester.
 Smart, John, Inner Temple.
 Domville William, Lincoln's Inn, assigned to James Mander, Lincoln's Inn.
 Whatton, John Watkinson, Loughborough.
 Lyne, Benjamin Hart, Liskeard.
 Brooks, James Sheffield, 29, John Street, Bedford Row.
 Harris, James, Beaufort Buildings, Strand, assigned to Christopher Hawdon, 6, New Inn.
 Eden, John, Liverpool.
 Selby, Gerard, Alnwick.
 Clutton, John, High Street, Southwark.
 Simmons, George, Truro.
 Jones, William, the elder, Glanbenno, Carnarvonshire.
 King, Abraham, Castle Street, Holborn.
 Fox, Henry, late of Redenhall, Norfolk, deceased, assigned to Wm. Hazard, Redenhall with Harleston.

Clerks' Names.

To whom articulated.

Kelly, J. Plymouth, Devonshire.	Kelly, S. Plymouth, aforesaid.
Kent, Francis Jackson, Hampton, Middlesex.	Jackson, William, Hampton, aforesaid.
Kernot, John, 7 Welbeck Street, St. Marylebone.	Jones, William, 34, Great Marylebone Street.
Lanwarne, Nicholas, Hereford, Herefordshire.	Cleave, John, of same place.
Larke, Thomas, Huntingdon.	Maule, G. Frederick, Huntingdon.
Laws, Cuthbert, Umfreville, Newcastle-upon-Tyne.	Leadbitter, R., Newcastle aforesaid.
Le Blanc, Charles, New Bridge Street.	Oliver, W. Elliott, of the same place, assigned to George Simon Cook, the same place.
Lewis, Benjamin, Astey's-row, Islington.	Winterbotham, Rayne, Cheltenham, Gloucestershire.
Lewis, Edward, the younger, Lloyd Street, Lloyd Square, Pentonville.	Corrie, Josiah, Birmingham.
Liddle, William, the younger, Newport, Salop.	Brookes, Ambrose, Newport, aforesaid.
Linton, John Peirson, Pickering, Yorkshire.	Peirson, Thomas, Pickering.
Lister, Joseph Storr, Easingwold, Yorkshire.	Lockwood, William, of the same place.
Loughborough, Thomas, St. Thomas's-street, Southwark.	Patrick, George, Durham, assigned to Ralph Lindsay, St. Thomas's Street.
Lowe, Henry Wade, Lower Belgrave-place, Pimlico.	Lowe, Samuel, Birmingham.
Lucas, J., Stroud-green, Hornsey.	Thrupp, J. W., 160, Oxford Street.
Lucas, Charles Rose, Cheltenham.	Newman, Edmund Lambert, Cheltenham.
Maskell, John, 86, Leonard street, Finsbury.	Pullen, John, 22, Austin Friars.
Maude, James Holme, Woodlands, Yorkshire.	Powell, Samuel, Knaresborough.
Mawdesley, Robert, Preston, Lancashire.	Greenwood, John, Preston, assigned to R. Easterby, Preston, aforesaid.
Millns, Adolphus Frederick, 6, Ely-place.	Milnes, James, Matlock, Derbyshire.
Miles, John Henry, Leicester, Leicestershire.	Miles, Samuel, Leicester, aforesaid.
Moore, Henry, Hungerford, Berks.	Rowland, William, Ramsbury, Wiltshire, assigned to J. Bishop, Serjeant's Inn, Chancery Lane, and by him assigned to John Matthews, Hungerford, aforesaid.
Mould, W. Scott, Willersley, Gloucestershire.	Averill, Stephen, Broadway, Worcestershire, assigned to John Gregory Welsh, Broadway, assigned to John Rodd Griffiths, Chipping, Campden, Gloucestershire.
Nash, James, Abingdon, Berks	Nash, James Powell, Henley-upon-Thames, Oxfordshire, assigned to T. Frankum, Abingdon.
Newall, William Nelson, Rochdale, Lancashire.	Whitehead, Henry, Rochdale.
Newstead, John Tinney, (described in the articles of clerkship as John Newstead only,) East Retford, Nottinghamshire.	Bigsby, Thomas, East Retford, Nottinghamshire.
Ogden, John Maude, St. Mildred's-court, Poultry.	Cay, Robert Burdon, Bishopwearmouth, Durham, assigned to W. Bernard Ogden, St. Mildred's Court.
Orton, John Swaffield, 14, Essex Street, Strand.	White, Wm. Lambert, Yeovil, Somersetshire, assigned to Richard White, 14, Essex Street, Strand.
Osborne, Robert, Queen Street, Mayfair.	Osborne, Jeremiah, Bristol.
Overbury, Nathaniel, Cateaton Street.	Stokes, Charles Scott, of the same place.
Overton, Henry, Clifton, Yorkshire.	Overton, George, York.
Palmer, Henry, Euston Grove, Euston Square.	Burt, Thomas Robert, East Grinstead, Sussex, assigned to Frederick Palmer, Mitre-court Chambers.
Percy, Edward, Nottingham, Nottinghamshire.	Percy, Henry, the same place.
Perry, Samuel, Whitchurch, New Inn.	James, John, Wrigton, Somersetshire.

LAWYERS TO BE IN PARLIAMENT.

NEXT week will be devoted to the elections; and of the multitude of parliamentary candidates, we find the usual number of lawyers. Indeed it is a pretty general rule, that if any thing is wanted to be done in an election, a lawyer is employed to do it. He is ready for the fight; his armour needs no cleaning; he always wears his weapons free from rust, and leaps into the contest as an every day's occurrence. We are not surprised therefore to find that most of those whom we have formerly commemorated as being "Lawyers in Parliament," are ready to continue so, and that many new aspirants are in the field. One or two of our former friends, we understand, are not to be among them; and we much regret to name Mr. Spence and Mr. Knight.

The present general election, however, will very much vary "the rights of the parties concerned." Most commonly a lawyer preferred a borough; occasionally he stood forward as the champion of popular or aristocratical rights; but the snug election dinner party—the moving by the patron's bailiff and the seconding by the patron's steward, was far less troublesome. Thus it was that most of the great lawyers of the day, former as well as present, will be found to have been returned for close boroughs. The scene will now however be changed; but nevertheless our profession is great of heart, and unappalled; the more difficulty the greater honor; and many of our more youthful friends have come forward, with an intrepidity which we hope may only be equalled by their success. The number of gentlemen of five years standing who are for "vote by ballot," and "triennial," not to say "annual Parliaments," is greatly on the increase; promises of Reform, of all kinds and descriptions, may be read as we run; and all the baits generally considered as the most grateful to the popular stomach, are offered to disguise the hook of the lawyer, who has been generally considered the most certain butt for all election jokes.

We cannot pretend to name all the lawyers who are going to stand; but the following we are pretty certain of. Sir Charles Weatherell will contest Oxford University; Sir Edward Sugden the town of Cambridge; the Attorney-General is nearly sure of being one of the first members for the classic region of St. Marylebone, although we have heard doubts expressed about it; the Solicitor-General will have a fight, and possibly

a victory, at Dudley; Sir James Scarlett will head the Tories of Norwich; Mr. Pemberton those of Taunton; Mr. John Williams aspires to the representation of Bristol; Mr. Pollock to that of Huntingdon; Mr. Follett is sanguine of obtaining Exeter; and Mr. Serjeant Spankie no less so of Finsbury, to which Mr. Temple also lays claim; Mr. Moore asserts his right to Lambeth; Mr. Serjeant Wilde is confident of Newark.

Amongst the *Solicitors*, Mr. Freshfield may deservedly rely on resuming his seat for Penryn; Mr. Wilks for Boston; Mr. Harvey for Colchester. And of the new candidates from this branch of the profession, Mr. Tooke will doubtless come in for the extended representation of Truro.

SUPERIOR COURTS.

Court of Chancery.

PRACTICE IN MOTIONS.

The leading counsel, after opening a motion, is to go on to the conclusion. To begin, and then to be relieved by his junior, and to resume his argument afterwards, is held to be contrary to the practice in motions in this Court.

Mr. *Pepys*, in moving to dissolve an injunction, after reading parts of the defendant's answer, and commenting on it, asked Mr. *Bacon*, his junior counsel, to read other parts: Mr. *Bacon* was reading them accordingly—

Sir *Edward Sugden* objected to that course, unless Mr. *Pepys* had concluded his argument. If Mr. *Pepys* intended to resume his argument, such a course was contrary to the practice in motions, and most unreasonable besides, for it would lead to interminable argument.

The *Lord Chancellor*, said he did not see any objection to the junior counsel's relieving his leader by reading parts of the answer—as he was not making any comment on it.

Sir *Edward Sugden* said it was contrary to the established practice, and was so decided by his lordship's predecessor. It would be giving the leading counsel the opportunity of collecting new arguments, and so make it impossible to come to an end.

Mr. *Pepys* acquiesced in that statement of the practice, and resumed—

The *Lord Chancellor* believed that was the better course; but asked if there really was a decision to that effect.

Sir *Edward Sugden* assured him that there was. *Stevens v. Rennie and another*. Westminster, Michaelmas Term. L. C.

Note.—The injunction was dissolved by his Lordship, on Saturday, the 24th Nov.; but the defendants were ordered to keep an account of the number of books sold by them, and of the proceeds, so as to be ready to account, if the plaintiff should bring his action at law and obtain a judgment against the defendants.

Rolls Court.

COMPENSATION.

The amount of improvement of the saleable value, is the criterion by which compensation will be made for improvement effected by a person to a property, which, by a misapprehension, he considered was to become his own.

This was a suit for effecting a sale of a mansion and considerable estate, in which several members of an ancient family were beneficially interested. The mansion had been for many years occupied by one of the parties, who had married a lady who was one of the *cestui que trusts*, at the yearly rent of forty pounds. There was some evidence given to shew that this gentleman had understood he was to have become the purchaser of the property by a family arrangement, and under the impression he had laid out much money in improvements of the mansion. There was not any valid contract for the sale.

Mr. *Pemberton* for the plaintiff, in alluding to this circumstance, said, that he thought the justice of the case would be answered by making an allowance to the extent by which the saleable value had been improved, having regard to the benefit which had been derived from these improvements by the defendant, who had effected them in his occupation of the property; and that a reference should be made to the Master to ascertain the amount.

Mr. *Bickersteth* contended, that by whatever amount the saleable value was improved by the monies which had been laid out by his client, he ought to have the benefit of it.

The Court ordered that the addition made to the saleable value by the improvements, was the criterion for deciding the compensation to be made. *Williams v. Vickers*, 17th Nov. 1832. M. R.

King's Bench Practice Court.

BAIL.—AFFIDAVIT OF SUFFICIENCY.

Where a bail swears, under Rule 3, T. T. 1 W. 4, "that he is not bail for any," without adding "other person," it is sufficient.

Channell opposed bail, on the ground, that in the affidavit of sufficiency, made under R. 3. T. T. 1 W. 4, the bail stated, "that they were not bail for any," without stating "other person," or in any other action. It would be impossible to assign perjury on such a statement. The bail not having complied with the form annexed to the rule of Trinity Term 1 W. 4, must be rejected.

Littledale, J.—I am not sure that you could not assign perjury on that statement. The words "bail for any," mean "bail for any other person."

Bail passed.—*Smith's bail*. M. T. 2nd Nov. 1832. K. B. P. C.

In the Exchequer of Pleas.

JUDGMENT AS IN CASE OF A NONSUIT.

Where the agent consents to try a cause at a particular sitting, the notice of trial is a

nullity, and judgment as in case of nonsuit cannot be obtained till the following Term.

Butt shewed cause against a rule nisi for judgment as in case of a nonsuit, for not proceeding to trial, pursuant to notice obtained by *R. V. Richards*, upon the ground that the application on the part of the defendant was premature.

The facts of the case appeared to be these: Issue was joined in last Trinity Term, and notice of trial given for the sittings after that Term. The defendant's agent, not being prepared to try at those sittings, it was agreed that the cause should be set down for the first sitting in this Term, and a consent in writing was signed to that effect, by the agents for both parties. It was contended by *Butt*, that this amounted to a notice of trial as of this Term, and that the consent so signed by the agents rendered the previous notice of trial a nullity, and that, therefore, the defendant could not call for the judgment of the Court as in case of a nonsuit till next Hilary Term; and in support of his argument cited the case *Redward v. Way and others*, 13 Price, 453, and mentioned in Mr. Dax's Book of Practice, and thus stated: "if notice of trial has been given, and plaintiff does not proceed to trial pursuant to such notice, the motion may be made in the ensuing Term; but if issue be joined *without notice*, the motion cannot be made until the second Term."

The Court were clearly of opinion, that the consent signed by the agents rendered the notice of trial given for the sitting after Trinity Term, a complete nullity; and that the application made by the defendant for judgment as in case of a nonsuit, could not be made before next Hilary Term, and that therefore the application was premature—and discharged the rule with costs.

Hodgkiss v. Tonkin and another, Nov. 23rd, 1832, Michaelmas Term.

Bankruptcy Court of Records.

GOODS CLAIMED BY A STRANGER TO THE COMMISSION.

The messenger having seized goods as part of the bankrupt's estate, which were claimed by another person, the Court will not summarily interfere to order their restoration, unless the title be clear, the probable damage irreparable, and the application be made without delay.

The bankrupt was a haberdasher at Gosport; the fiat was issued in August, 1832; and the petitioner, his brother, was also a haberdasher, residing in the Isle of Wight. On the 8th of September, the messenger under the fiat went to the house of the petitioner, and took possession of his property. The petitioner stated, and affidavits were produced to prove, that the whole of the property seized was his own, and that he had actually paid for it with the exception of about 70*l.* worth; that the goods had been bought partly of the bankrupt, and partly of other persons; and prayed that an or-

der of the Court might be issued to the assignees and petitioning creditor of the bankrupt, to restore the goods. It appeared that the assignees had preferred an indictment against the petitioner and the bankrupt, for a conspiracy to defraud the creditors. The petition was presented on the 25th of October.

Mr. Twiss.—The only reason the petitioner has for coming to this Court is, that it could afford him the speediest remedy. He could not bring an action of trespass or trover to trial before the spring assizes, and in the mean time he is losing his business. The petitioner's claim to the property should be decided upon forthwith, by this Court, and he is willing to submit to such terms as the Court may impose upon him in the prosecution of his claim for redress.

Mr. Montagu and Mr. Ching for the assignees.—Although the petitioner, a stranger to the commission, has brought himself within the jurisdiction of the Court, the Court ought not, in its discretion, to exercise that jurisdiction by hearing the petition upon its merits. It would be contrary to the practice, under the circumstances of this case, to interpose on the application of a stranger. The petitioner ought to have applied either to this Court, or to the Court of Chancery, instantly, if he had wished for summary interposition to protect his property from irreparable injury. He has not done so, and it is reasonable to conclude that to delay the hearing of the petition until the trial of the indictment would not be of any injury to him; however, if the petitioner thought possession of the goods to be essential, he might have them upon giving security to the assignees.

Sir John Cross was of opinion that the Court ought to hear and decide the petition upon its merits; but

The **Chief Judge** and **Sir George Rose**, although they were of opinion that the Court might hear the petition, if it thought fit so to do, yet the practice of the Court of Chancery sitting in bankruptcy was only to interfere and order its own officer to deliver over property where irreparable waste would otherwise have happened; and then the title must be clear, and the party complaining must have applied to the Court without any delay. This Court has only the jurisdiction which the Lord Chancellor sitting in bankruptcy had before the act which constituted this Court, in controuling the assignees, and administering the assets of the bankrupt's estate.—When a question arises as to whether goods belong to a bankrupt's estate, or to a stranger, this Court does not take upon itself to decide the question; but leaves the parties to contest the matter in the other Courts; and certainly the **Lord Chancellor**, sitting in Bankruptcy, had only interfered where the title was clear; as some years since, on the failure of some London bankers, who had in their possession some short bills belonging to country bankers, *ex parte Rowton*, 17th Vesey, 426, where **Lord Eldon** held, that as the short bills were the property of the country bankers, they were entitled to have them delivered up

to them, for the assignees were in no better situation than the bankrupts themselves would have been. In the case before the Court the petitioner allowed all the time from the 8th of September to the 25th of October to elapse before he commenced these proceedings, which did not shew that promptitude which the Court expected in cases like the present. It did not appear that there was any absolute necessity for the immediate restoration of this property. The petitioner in this case had been so quiescent that no Court of Equity would have granted him an injunction. The petitioner will be at liberty to pursue his remedy at law, or, after the trial of the indictment, he may again apply to this Court; but at present the petition must stand over.—*Ex parte Samuel Heath, in re John Heath*. Nov. 15th, 1832. B. C. R.

NOTES OF THE WEEK.

DISSOLUTION OF PARLIAMENT.— NEW ELECTION.

By a proclamation dated Monday the 3d instant, and published in a Gazette Extraordinary of that day, the Parliament, which stood prorogued to Tuesday the 11th, was dissolved. Writs for calling a new Parliament have been ordered, and are returnable on Tuesday the 29th day of January next.

A proclamation has also been issued for electing and summoning the sixteen Peers of Scotland. Monday the 16th January is fixed as the day of election of such Peers.

The day of election for members of the House of Commons is not pointed out in the Reform Act, and the former law continues in force. In counties, by 25 Geo. 3, c. 84, the sheriff is required, within *two days after the receipt of the writ*, to cause proclamation to be made of a Court for the purpose of such election, on a day (Sunday excepted) not later from the day of making such proclamation than the *sixteenth day*, nor sooner than the *tenth day*.

In *Cities and Towns which are counties*, the election, according to the 19 G. 2, c. 28, must take place within *eight days* after the receipt of the writ, and the Sheriff must give *three days* notice of the day of election, exclusive of the day of the receipt of the writ and of the day of election.

In *other Cities and Boroughs*, the 7 and 8 W. 3, c. 25, requires the returning officer to give *four days* notice at least, of the day appointed for the election, and proceed to the election within eight days from the receipt of the writ.

In New Shoreham, Cricklade, Aylesbury, and East Retford, the election is to take place in not less than *eight* nor more than

twelve days from the receipt of the precepts.

The polling at contested elections in Counties is to commence at nine o'clock in the forenoon of the *next day but two* after the day proclaimed as fixed for the election, unless it fall on Saturday or Sunday, and then it is to be postponed till Monday. It is to continue two days; seven hours the first, and eight the second. In *Cities and Boroughs*, it is to commence on the day fixed for the election, or on the next day, or at farthest on the third, unless it be Saturday or Sunday; to continue for two days; and there, as well as in Counties, the polling must close at four o'clock on the second day.

The final state of the poll is to be declared at or before two o'clock on the day after its close, unless it be Sunday, and then on the Monday.

ATTENDANCE AT THE PUBLIC LAW OFFICES.

We have received several complaints of the inconvenient hours which are fixed for the despatch of business in the several offices, both in Law and Equity. They are not only too limited during the morning, but vary in almost every department, both in the time of opening and closing. In some offices business is commenced at nine, in others at ten, and in many not until eleven. Then the door of some places is shut at one, of others at two, and so on till four. The diversity is equally great in the evening attendance,—re-opening here at four, there at five, and elsewhere at six; and closing at different places from seven till nine.

Now that the practice of the Courts has been assimilated, we should hope that the inconsistencies and inconvenience here complained of will be removed; and we cannot doubt that if the matter were brought to the notice of the Judges, they would readily grant whatever order will facilitate the discharge of the duties of the practitioner.

ROLLS SITTINGS.

His Honor has further postponed his Sittings, until Friday the 14th instant.

ALTERATION IN THE KING'S BENCH SITTINGS.

London.

The Chief Justice will go to Guildhall on Tuesday next, Dec. 11th, and adjourn to the following day, Wednesday the 12th.

Causes on the List for Tuesday, the Ad-

journalment Day, will stand over for the next day, Wednesday.

Middlesex.

The Lord Chief Justice will sit at Nisi Prius, at Westminster, on Tuesday next, for the trial of causes in Middlesex.

ANSWERS TO QUERIES.

Law of Property and Conveyancing.

DEVISE.—APPLICATION OF PURCHASE MONEY. P. 52.

It is clear, that the purchaser of any part of the *personal* assets of *A. B.*, is *not* bound to see to the application of his purchase money. See *Elliott v. Merryman*, Ch. Rep. 78. And with regard to the purchase of his *real* assets, the case, as stated, seems to fall precisely within the general rule, that unless there are *specified* or *scheduled* debts, such as *legacies*, &c. (which does not appear to be the case here), a purchaser is *not* answerable for the misapplication of the purchase money after it is paid into the hands of trustees. See *Spalding v. Shaloner*, 1 Vern. 301. *Culpepper v. Aston*, 2 Ch. Ca. 115, 221. *Cotteril v. Hampson*, 2 Vern. 5. It follows, that a purchaser, in this case, *may* safely complete his contract, and pay the purchase money to the trustees, without being compellable to see to the application of it.

Z. A.

Common Law.

BANKRUPTCY.—TROVER. P. 51.

I think C. C.'s very brief and decisive answer to the query on this subject cannot be supported. He says, "If the barley was delivered, it became part of the bankrupt's goods." What bankrupt? It is merely a man, "finding his affairs embarrassed," who re-delivers these goods, as a payment of his just debt, and who does not become a bankrupt until some time *after* such re-delivery. Mr. Holt, in his Treatise on the Bankrupt Laws, c. 10. § 10, says, "Two circumstances are necessary to constitute the payment of a particular creditor a voluntary payment, and to render it void, as such, against the assignees. The first, that it must be perfectly voluntary, and not obtained by the importunate pressure of the creditor, nor by his menace, or employment of legal process. The second, that the trader must either *directly contemplate bankruptcy*, or, under all the circumstances of the case, added to his embarrassed condition, it must be a reasonable inference that such a provision against bankruptcy *was in his mind*, and that he intended to secure the favored creditor against any such event." The *contemplation of bankruptcy* is the thing to be looked to; and as no peculiar circumstance in the query leads us to such a conclusion, I still trust that my former opinion stands unimpeached.

H. T.

Law of Landlord and Tenant.

NOTICE TO QUIT. VOL. IV. P. 416.

Et vide p. 15, ante.

I agree with H. B. A., that a mortgagee cannot grant a lease without the concurrence of the mortgagor, so as to be binding on him, because the lessee will take, subject to the equity of redemption in the mortgagor. See the cases cited in 3 L. O. p. 138. But it is said, that six months notice to a tenant from year to year, *either from the mortgagor or the mortgagee*, or his assignee, will be sufficient to determine the tenancy; Cov. Pow. Mort. 176; so that a notice *by the mortgagee alone* is sufficient. In *Pope v. Bigge*, 9 B. & C. 245, it is held, that payment of rent by the tenant to the mortgagee, after notice (as stated in the query), since the stat. of Ann, does of itself amount to an attornment; that is, the lessee thereby becomes tenant to the mortgagee. Now if he be *tenant to the mortgagee*, and if notice *from the mortgagee alone* would suffice to determine the tenancy, must it not necessarily follow, that notice from the tenant to the mortgagee *alone* would be sufficient?

A STUDENT.

QUERIES.**Law of Property and Conveyancing.**

TRUST FOR SALE.—PURCHASER.

A. borrows money from B., and to secure the repayment thereof, conveys an estate to C, in trust to pay the rents and profits to B. until a certain day, and then in trust to sell, on default of payment. A. makes default. C., after a written demand given by B., sells the premises by auction. Can B. become the purchaser? and would a Court of Equity, on a bill filed by A. against B., alleging that B. had taken advantage of the embarrassments of the former to sell the premises, annul the sale, on the ground of fraud or collusion with C.?

Z. A.

HUSBAND AND WIFE.—SETTLEMENT.

A., a feme sole, conveys her real estate to trustees, upon trust for her own separate use, and afterwards marries. Is the settlement valid, as against her husband, who was no party to the deed?

A.

HUSBAND AND WIFE.—CHILD.

Can a husband (before the birth of a child) alien the fee simple estates of his wife, so as to give a good title to a purchaser, for the joint lives of himself and wife; or, in other words, does the husband of a tenant in fee simple become seised of an estate of freehold (*viz.* an estate for life) immediately on marriage?

A.

MISCELLANEA.

CONVICTION FOR WITCHCRAFT IN 1662.

At the Assizes held at Bury St. Edmunds,

on the 10th March, 1662, before Sir Mathey Hale, Chief Baron of the Exchequer, two widows were convicted for witchcraft. The following is the charge of the Judge, and the subsequent circumstances:

"The Judge, in giving his direction to the jury, told them that he would not repeat the evidence unto them, lest by so doing he should wrong the evidence on the one side or on the other. Only this he acquainted them with, that they had two things to inquire after. First, Whether or no these children were bewitched. Secondly, Whether the prisoners at the bar were guilty of it. That there were such creatures as witches, he made no doubt at all; for, 1st, The Scriptures had affirmed so much. 2dly, The wisdom of all nations had provided laws against such persons, which is an argument of their confidence of such a crime. And such hath been the judgment of this kingdom, as appears by that act of parliament which hath provided punishments proportionable to the quality of the offence; and desired them strictly to observe their evidence; and desired the great God of heaven to direct their hearts in this weighty thing they had in hand; for to condemn the innocent, and to let the guilty go free, were both an abomination to the Lord."

With this short direction the jury departed from the bar, and within the space of half an hour returned, and brought them in guilty upon the several indictments, which were thirteen in number, whereupon they stood indicted. This was upon Thursday, in the afternoon, March 13, 1662. The next morning, the three children, who were alleged to have been bewitched, with their parents, came to the Lord Chief Baron Hale's lodgings, who all of them spoke perfectly, and were in as good health as ever they were; only one of them, by reason of her great affliction, looked very thin and wan. And their friends were asked at what time they were restored thus to their speech and health, and one of the parents did affirm, that within less than half an hour after the witches were convicted, they were all of them restored, and slept well that night, feeling no pain; only one of them felt a pain like pricking of pins in her stomach.

Afterwards they were all brought down to the Court; except one, who was so afraid to behold the prisoners, that she desired she might not see them. The other two continued in the Court, and they affirmed in the face of the country, and before the witches themselves, what before had been deposed by their friends and relations,—the prisoners not much contradicting them. In conclusion, the Judge and all the Court were fully satisfied with the verdict, and thereupon gave judgment against the witches, that they should be hanged. They were much urged to confess, but would not. That morning the Judges departed for Cambridge, but no reprieve was granted; and they were executed on Monday the 17th of March following, but they confessed nothing to the last.

The Legal Observer.

Vol. V. SATURDAY, DECEMBER 15, 1832. No. CXIV.

— "Quod magis ad nos
Pertinet, et noscere malum est, agimus."
HORAT.

THE ELECTIONS.

THE elections now taking place throughout the country are necessarily watched with the greatest interest, and each class is anxious that its own interests should be represented and attended to. As lawyers, we cannot divest ourselves of a lively hope that our own profession has used, and will use, its best exertions, to secure the return of a sufficient number of its own body. We entertain no alarm that in a reformed house of Parliament there will be what has been called "a run against the lawyers;" for, first, we are, when once prepared for the race, at least as fleet of foot, and as capable of sustaining the contest, as any of our opponents; and, next, the important interests of our profession are so strongly interwoven with those of every class of the state; its roots and its branches are so entwined and connected by the closest ties, with almost every family in the country, that the same measure which struck at the law must necessarily injure all other classes. On the contrary, if any revolutionary alteration of the existing distinctions in the state were unfortunately to take place, we conceive that, if we did not prove to be immortal, we should be the last survivors of the fight. We entertain no fears, therefore, on this point; but however great the strength of the lawyers to resist great attacks, it appears to us that they are much too passive in their endurance of small ones; and we hope to find a sufficient number of

no. cxiv.

our profession in the House, who will be ready to watch over all that concerns the welfare of their brethren out of it.

At the time that we write this, we cannot know so much of the result of the elections as our readers will when they read it. As far, however, as this is known, we have great reason for congratulation. Three out of the Metropolitan divisions have returned lawyers; and it is to be remembered, that a precedent is thus created for ensuring the future return of members of the same profession. Marylebone has returned the Attorney-General into Parliament, a gentleman, it is to be recollected, more distinguished in the legal than the political world, except by his official station. Finsbury has selected Mr. Serjeant Spankie, an advocate in large practice, and of no very strong shade of party; and Southwark has returned, at the head of the poll, Mr. William Brougham, a Master in Chancery, and a brother of the existing Lord Chancellor. We cannot complain, therefore, of our treatment by the capital. The cry of "down with the lawyers," has not been even attempted to be raised; and if we are as well represented in the provinces, there is little chance of an *indoctum parlamentum*.

Let us now look to the return in the provinces. Sir James Scarlett has secured his return for Norwich, a large and populous town. Mr. Pollock is returned for Huntingdon. We have here therefore, two lawyers of conservative principles, and both proper men. We much regret that Sir Charles Wetherell and Sir Edward Sug-

den have been unfortunate, not because we agree with them in politics,—for we have none,—but because we would have every great party, and all opinions, ably represented. We cannot help also, feeling a personal sympathy with the former, if he be excluded from the House, a stage on which he has so long delighted to perform.

The Solicitor General has succeeded at Dudley; and we may now reasonably anticipate that the measures of the Real Property Commissioners, including the bill for a General Registry, will be taken up by Government. This important result may follow his appointment.

We could have wished to have seen Mr. Follett, Mr. Serjeant Goulburn, and Mr. Kelly in Parliament; and it appears to us not a little to their credit, that at the eleventh hour they have espoused the unpopular side.

Among the untried lawyers in Parliament, we find Mr. Tancréd returned for Banbury, Mr. John Jervis for Chester, and Mr. Faithful, a solicitor, for Brighton.

This is all that is at present certain. We shall report further progress next week.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1831—1832.

No. IX.

Criminal Law.

COINING. 2 W. 4, c. 34.

THIS Act was passed on the 23d May last, and is entitled “An Act for consolidating and amending the Laws against Offences relating to the Coin.”

The objects of the Act are, 1st. to consolidate all the laws relating to offences against the Coin of the realm.

2dly, To reduce all those offences to degrees below Treason.

3dly, To abolish the punishment of Death for any of those offences.—These objects are effected by the first section; and the second fixes the commencement of the Act, on the 1st May, 1832.

4thly, To facilitate the conviction of offenders, by various amendments in the previous law; the principal of which are as follow:

If any person shall counterfeit any coin, resembling or apparently intended to resemble or pass for any of the King's current gold or silver coin, he shall in England and Ireland be guilty of felony, and in Scotland of a high crime and offence;

and being convicted, shall be liable to be transported for life, or for not less than seven years, or to be imprisoned, not exceeding four years. The offence shall be deemed to be complete, although the coin shall not be in a fit state to be uttered, or the counterfeiting shall not be finished. § 3.

Coloring counterfeit coin or pieces of metal, with intent to make them pass for gold or silver coin; coloring or altering genuine coin, with intent to make it pass for a higher coin—*transportation for life*. § 4.

Impairing the gold or silver coin, with intent, &c.—*transportation for fourteen years*. § 5.

Buying or selling, &c. counterfeit gold or silver coin for lower value than its denomination: importing counterfeit coin from beyond seas—*transportation for life*. § 6.

Uttering counterfeit gold or silver coin, imprisonment not exceeding *one year*. Uttering, accompanied by possession of other counterfeit coin, or followed by a second uttering—imprisonment not exceeding *two years*. Every second offence of uttering, after a previous conviction, shall be felony—*transportation for life*. § 7.

Having three or more pieces of counterfeit gold or silver coin in possession, with intent, &c.—imprisonment. Second offence, felony and transportation. § 8.

What shall be sufficient evidence of a conviction for a previous offence against the act, is set forth in § 9.

Making, mending, or having possession of any coining tools—*transportation for life*. § 10.

Conveying tools or monies out of the Mint without authority—*transportation for life*. § 11.

The various offences relating to copper coin are stated in § 12.

Where any gold or silver coin shall be tendered to any person who shall suspect it to be diminished otherwise than by reasonable wearing, or to be counterfeit, he may cut or break the same; and if it shall appear to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering shall bear the loss; but if of due weight, and lawful coin, the person cutting is required to receive it at the rate coined. If any dispute shall arise it shall be determined in a summary manner by a justice of the peace, who is empowered to examine upon oath the parties, or any other person; and the tellers of the receipt of the Exchequer, &c. are required to cut or break every piece of counterfeit

or unlawfully diminished gold or silver coin which shall be tendered to them in payment of the revenue. § 13.

Provision for the discovery and seizure of counterfeit coin and coining tools, for securing them as evidence, and regulating the prosecution, are contained in §§ 14, 15, and 16.

The moneyer, or other officer of the Mint, need not to be called to prove the coin to be counterfeit, but any other credible witness will be sufficient. § 17.

The punishment of accessories is fixed in § 18.

The Court may order hard labor or solitary confinement, together with imprisonment. § 19.

Offences committed at sea are within the jurisdiction of the Admiralty. § 20.

The rules of interpretation of the Act are contained in § 21; and 22, the last section, limits actions brought against persons acting under the statute.

For further details and remarks on the effect of the Act, we refer to 3 Dowling's Collection of Statutes, p. 100 *et seq.* and Roscoe's Digest of the Law relating to offences against the Coin.

THE PROPERTY LAWYER. No. VIII.

ON THE RIGHT OF A CLERGYMAN TO CHARGE HIS BENEFICE.

We have before shewn that a warrant of attorney may be so drawn as to enable a clergyman to grant an effectual charge on his benefice, 2 L. O. 196; but if the warrant of attorney expressly recites that it is given as a collateral security for the payment of an annuity charged on the benefice, it will be void. *Kirlew v. Butts*, 2 B. & Ad. 736 n, and *antè*, 308. The following case decides that a warrant of attorney given by a clergyman authorizing his creditor to issue sequestration, is void:—

The defendant, a clergyman, had raised money by way of annuity of the plaintiff and of W. Morris. To the plaintiff he gave a warrant of attorney to enter up judgment for the arrears of his annuity, and in the warrant expressly authorized him to issue a sequestration. He also gave Morris a warrant of attorney to enter up judgment for arrears, but the warrant to Morris contained no allusion to a sequestration. The defendant having failed to pay the annuities, the plaintiff first, and then Morris, entered up judgment, and issued respectively sequestrations against the defendant's bene-

fices; whereupon *Wilde*, Serjeant, on the part of Morris, obtained a rule *nisi* to set aside the plaintiff's warrant of attorney, judgment, and sequestration, on the ground that his warrant of attorney containing an express authority to issue a sequestration, was a charge on the benefices, and therefore void under 13 Eliz. c. 20. § 1, which enacts, "That all chargings of such benefices with cure, with any pension, or with any profit out of the same to be yielded or taken hereafter to be made, other than rents to be reserved upon leases hereafter to be made according to the meaning of this act, shall be utterly void;" and he referred to *Shaw v. Pritchard*, 10 B. & C. 241; *Flight v. Salter*, 1 B. & Ad. 673; *Gibbons v. Hooper*, 2 B. & Ad. 734; 2 L. O. 195; and *Doe dem. Mitchinson v. Carter*, 8 T. R. 57.

Taddy, Serjt., shewed cause. Both parties are in the same situation, and the Court will not interpose in favour of one. The plaintiff's warrant of attorney is a mere security for a debt; a mode of shortening process of law, and not a charging of the defendant's benefice with any pension within the meaning of the statute. In *Flight v. Salter*, the warrant of attorney authorized the party to proceed immediately to sequestration before any arrears of the annuity were due, and the Court relied on *Doe dem. Mitchinson v. Carter*, where it was expressly found that the warrant of attorney was given in fraud of a covenant not to assign a lease. A debt is not a *profit* within the meaning of the statute; and at all events, this application can only be made by the defendant, and not by a stranger to the judgment.

Wilde. Morris, although not a party, has a sufficient interest to entitle him to apply for the removal of a judgment which impedes his own execution. *Saunders v. Hardinge*, 5 T. R. 9. And the plaintiff's warrant of attorney expressly pointing at the proceeding by sequestration, is a charge on the benefice within the meaning of the statute.

After taking time to consider, the Court pronounced a rule that Newland should no further enforce his writ of sequestration; but that he should not be subject to an action of trespass. Rule absolute accordingly. *Newland v. Watkin*, 9 Bing. 113.

REVIEW.

A Supplement to a Practical Treatise on the Law of Patents for Inventions, with Suggestions of many Alterations in that Law; and an Abstract of the Laws in force in America, Spain, Austria, Netherlands, and France. By Richard Godson, M. P. Barrister at Law. London: Saunders and Benning. 1832.

THIS work, which the author describes to be a Supplement to his former Practical Treatise, is confined to the Law of Patents for Inventions. The original work comprised also Monopolies and Copyright.

The cases on the subject of Patents, since the first publication of Mr. Godson in 1823, are not numerous,—being only twenty-three in nine years. The author has followed his original plan: subdividing the supplementary matter into chapters, similar to the previous work; namely, 1, of a *Patent* generally. 2, Of the *Inventor*. 3, Of a new manufacture, or the *Subject* of a Patent. 4, Of the *Specification*. 5, Of the *Practice* of obtaining a Patent. 6, Of the *Construction* of Letters Patent. 7, Of the *Property* in Inventions. 8, Of the *Infringement* of a Patent, and remedies for that injury. 9, Of Letters Patent, when void, and the method of having them cancelled.

As will appear by the title-page, the author professes to make “suggestions of many alterations in the Law;” but we do not observe that he has contributed much to aid the future legislator.

His suggestions for an improvement in the law respecting the first inventor, are as follow:

“If a communication be made from a foreigner residing abroad to a person in this country, that person can have a patent as being the original inventor. Why not permit a foreigner in this country to give the information? And if a foreigner, why not an Englishman?”

“It might be advantageously enacted that the inventor might assign his right to a patent, so that the assignee should have the patent in his own name.”

A description of inventors, extracted from the London Journal of Arts and Sciences for 1831, is given by Mr. Godson, and may be interesting to introduce here.

“Useful inventors are of three classes; the first are men of genius, capable of producing important inventions that involve the entire projecting of new machines, or remodelling of existing ones, and the organization of new or complicated processes and systems of working. These are very few.

“The second are men who have not so extensive a scope of imagination and intellect as to project new systems or great changes, and to organize the means of effecting them, but who are capable of making marked improvements upon existing systems and machinery, or partial changes in them. This class is considerable.

“The third class is made up of men of small imagination, who are not capable of any great originality of thought, but who have a certain ingenuity which they can apply to the things that come within the range of their observation, and possess a tact for correctly and accurately executing that which they conceive.

“Their province is to improve in detail, to give a finish to the detached parts of the extensive combinations formed by superior

minds, and to fill up the chinks that occur frequently in the plans of the greatest inventors. Happily this class is immense, being spread thickly over the whole body of mechanics, from the manufacturer and engineer down to the lowest workman. Such men constitute expert mechanicians, who are never at a loss for expedients for overcoming the practical difficulties of detail, that occur in their business, and are perpetually making trifling inventions which they require for immediate application.”

The following are Mr. Godson's observations on the alterations required in the definition of the subject of a patent.

“There should be a body of law made expressly for the discoveries in chemistry, because the rules which apply to the inventor of a machine do not adapt themselves to the discoverer of a chemical truth.

“How far the first discoverer of a principle should be protected in a monopoly of the principle, and not be confined to the means by which he brings it into use, is a question of great difficulty; but it seems to be very dangerous to give a monopoly of the principle.

“What shall be the extent of an alteration or improvement which shall support a patent, is also a question of great difficulty, but it might be removed by a good legislative definition of an improvement.

“But it is worthy of observation by inventors, that a slight combination of mechanical means, which form an instrument that is new and useful, will support a patent.”

The last chapter of the work is devoted to Foreign Laws respecting Inventions, and we have selected the various durations of Foreign Patents, the pecuniary terms on which they are granted, and the power of transferring the right.

In America, the duration of the Patent granted to citizens, and to aliens who have resided two years in America, is fourteen years, if the invention has not been published in a foreign country. The inventor, or his representative, may assign his interest; but the assignment must be recorded.

In Spain there is no exception as to aliens, and the grant is in the form of “a Royal Patent of Privilege,” which is issued without previous examination of the novelty or utility of the object. If it has not been used in Spain nor abroad, the privilege is given by a Patent of *Invention*, otherwise of *Introduction* only. The extent of the privilege is according to the duty paid; viz. for five years, 1000 reals vellon; for ten years, 3000; for fifteen years, 6000; and for a privilege of introduction or importation, 3000. The right may be transferred or bequeathed as personal property. The

transfer must be by a public deed registered within thirty days.

In *Austria* the privilege is granted both to natives and foreigners, and extends over the whole monarchy. The duty or tax payable is, for the first five years, ten florins; for the sixth year, fifteen florins; with an increase of five florins on each year, making for the fifteenth year sixty, and for the longest term 425 florins. The privilege may be let, or disposed of at pleasure. If the term originally taken be only fifteen years, it may be prolonged for another fifteen years, on paying the usual rates.

According to the *Belgian* Law, patents are granted to those who make an invention, or first introduce or practise it. The duties are regulated by the duration of the term: for five years, 150 francs; for ten years, from 300 to 400, according to the importance of the invention; for fifteen years, from 600 to 750 francs. The patent may be prolonged for five, ten, or fifteen years, and it may be assigned by the King's authority, on payment of nine francs.

In *France*, the national assembly declared that "every new idea belongs originally to him who conceived it;" and that it would be to attack the rights of man in their essence, not to regard a discovery in industry as the property of the author. Patents are granted for five, ten, or fifteen years, according to the choice of the inventor; and, if taken for the shorter periods, may be extended to fifteen years, beyond which it can be enlarged only by the Legislature. The tax is as follows: for five years, 800 livres; for ten years, 800; for fifteen years, 1500; and for prolongation, 600; besides the fees on passing and registry. There is besides the annual tax on all professions in the useful arts and trades. Here also the right to the patent may be transferred.

The plan on which Mr. Godson has proceeded, of publishing, by way of "Supplement," the cases decided since his original work, was long ago resorted to by Mr. Tidd, in his books of Practice. It would appear to be a convenient method of continuing the subject, and avoiding the expense of a new Edition; but it is not without disadvantages, and we understand is rarely successful: the latest treatises being generally preferred to these disjointed publications. The New Cases in the present Volume appear to have been carefully digested by the Author, and will of course be useful to the Profession, in bringing the Law down to the present time. The Analysis of the Laws of other Countries will

assist the Legislator (if not the Practitioner) in supplying the defects of our own system.

NOTE ON THE REVIEW OF MR. SHELFORD'S LAW OF LUNATICS.

[We have been requested to insert the following note.]

In the review on Mr. Shelford's Law of Lunatics, in the last number of the Legal Observer, the following mistakes and omissions are stated to have escaped the author. "Thus, the office of Clerk of the Custodies of Lunatics is mentioned as an existing office (p. 27), but it not stated that it is now abolished after the 26th of August, 1835, by the 2 & 3 W. 4. c. 111. So also, in stating that the Barons of the Exchequer in Scotland exercise a jurisdiction in lunacy (p. 30), it should have been mentioned that the Court of Exchequer of Scotland is now abolished by the 2 W. 4. c. 54." At the time the part of the work referred to in the above review was printed, neither of the above statutes had passed. The statute 2 & 3 W. 4, c. 111, is stated in a subsequent part of the work (see p. 624, n.). It is to be observed, that the jurisdiction exercised by the Barons of the Exchequer in Scotland has not yet determined, as the statute 2 & 3 W. 4, c. 54, only provides for the discharge of their duties by a Judge of the Court of Session after the retirement or death of the last of the present Barons.

[These acts might have been mentioned in the *Addenda*.—Ed.]

THE GENERAL CEMETERY ACT.

THE most interesting Local Act passed in the last session of Parliament, is the 2 & 3 W. 4, c. 110, which authorizes the establishment of a General Cemetery for the interment of the dead in the neighbourhood of the metropolis. We shall give the summary of its principal contents from the last volume of Mr. Dowling's useful collection of Statutes.

By § 1, certain persons are incorporated as a company, for the purpose of a general cemetery for the interment of the dead in the neighbourhood of London. By § 2, the company are empowered to purchase premises for the purposes of the act. By § 3, the parish of St. Pancras is excepted, as a place within which such premises may be purchased. The company are entitled to sell lands which they do not want (§ 4.); but they are prevented from selling land which has been consecrated (§ 5). The treasurer is to give receipts for the payment of the money (§ 6). The word "grant,"

in conveyances from the company, is to amount to certain covenants (§ 7). The proprietors are allowed to raise money amongst themselves for the undertaking, not exceeding 45,000*l.*, to be divided into shares of 25*l.* each. (§ 8.) Shares are to be deemed personal property (§ 9). They may compel the payment of subscriptions (§ 10). Sect. 11, directs how the subscribers are to vote. The person whose name stands first as a joint proprietor with others, is to be deemed the owner (§ 12). Sect. 13, provides that lunatics and minors may vote by their committees and guardians. The proprietors must be possessed of shares for six calendar months before they can vote (§ 14). Sect. 15, directs that the names of proprietors are to be entered, and certificates of their shares delivered to them; and also makes provision for granting new certificates when the old ones are worn out or destroyed. The company are empowered to raise an additional sum by way of mortgage, and mortgagees are not to have priority on account of date, &c. (§ 16). Sect. 17, directs the interest of money borrowed to be paid in preference to dividends. Sect. 18, prohibits creditors from voting. The company are enabled to raise the amount again should the mortgages be paid off (§ 19). Sect. 20, directs how the money raised is to be applied. The company are empowered to build a cemetery (§ 21); to build a chapel (§ 22). The company may contract for the works to be done (§ 23). They may compound for breach of contract (§ 24). By § 25, the company are allowed to make sewers from the cemetery. The cemetery is to be consecrated (§ 26). The company must pay a fee on the interment of persons removed from certain parishes (§ 27). A larger fee is to be paid to the rector of Mary-le-Bone (§ 28). The company must keep an account of such fees, and allow it to be inspected (§ 29). Sect. 30, imposes a penalty for refusing inspection. The company must account for fees half-yearly (§ 31). They may require evidence of the identity of the incumbent (§ 32). The fees are directed to be paid to the incumbent for the time being (§ 33). The incumbent is to account with his predecessors (§ 34). The books of the company are to be deemed evidence (§ 35). The company are to appoint a minister (§ 36); the duties of the minister are defined (§ 37); any clergyman may officiate (§ 38); a stipend is to be paid to the minister (§ 39). Sect. 40, directs how the stipend may be recovered. The directors are to appoint a clerk and sexton (§ 41). A part of the cemetery not consecrated, may be set apart for foreigners and others not members of the Church of England (§ 42). The company are enabled to sell the exclusive right of burial in vaults, in perpetuity, or for a limited period (§ 43). They are to keep the cemetery in repair (§ 44). The form of grant of the exclusive right of burial in vaults, &c. is given, and a memorial of which is to be entered in a book by the clerk (§ 45). The persons who may purchase such exclusive right are enabled to dispose of the same, and form of assignment is given (§ 46);

such derivative assignment is to be registered (§ 47). No interment can be made in a private vault without the consent of the owner (§ 48). The company are empowered to take down monuments, &c. erected contrary to condition (§ 49). No burials are to be made in vaults, except in leaden coffins (§ 50). All burials within the cemetery must be registered (§ 51). The days for the first and other general meetings of the company are appointed (§ 52). The general meetings are to appoint a treasurer and clerk (§ 53); the clerk is not to be treasurer, and *vice versa* (§ 54). No money is to be issued without an order from the directors (§ 55). The general meetings are empowered to make bye-laws (§ 56). The first general meeting is to choose directors (§ 57). The general meetings are to consist of not less than twenty persons, possessed in the aggregate of one hundred shares (§ 58). Notice of adjourned meetings is to be given (§ 59). The service of the directors is defined (§ 60). Five directors are to form a *quorum* (§ 61). Mode of supplying vacancies in the direction (§ 62). The appointment of auditors (§ 63). The service of the auditors is defined (§ 64). Mode of supplying vacancies among the auditors (§ 65). The directors and auditors may be re-elected (§ 66). No person holding office is allowed to be a director or auditor (§ 67). The office of any director or auditor becoming disqualified, is to be vacant (§ 68). The proprietors are empowered to remove directors or auditors for misconduct (§ 69). A chairman and deputy chairman of directors are to be appointed (§ 70). Any director or auditor contracting for works, &c. after election, is to become disqualified (§ 71). The chairman, or deputy chairman, shall preside at general meetings (§ 72). The powers and duties of the directors are defined (§ 73). Special meetings may be convened (§ 74). Sect. 75, provides that no business shall be transacted at a special meeting other than that for which it was called. Sect. 76, states how the notice of meeting is to be given. The orders and proceedings are to be entered in a book (§ 77). The directors are to order accounts to be kept (§ 78). The officers are to make out accounts when required (§ 79). The directors are to cause a report of the receipts and disbursements to be annually laid before the proprietors (§ 80); such report, when confirmed, is to be binding, unless some error is discovered within six months (§ 81). It is competent for the annual meetings to examine the accounts (§ 82). The directors are enabled to appoint a temporary treasurer or clerk (§ 83). The clerk is to keep lists of the proprietors (§ 84). The directors are empowered to make calls, to sue for such calls if not paid, or to declare the shares to be forfeited, and direct them to be sold (§ 85); the overplus shall be paid to the defaulter (§ 86). How proceedings in actions are to be taken (§ 87). Mode of ascertaining the proprietorship of shares in certain cases (§ 88). The proprietors in arrear shall not be allowed to vote (§ 89). Shares are allowed to be sold; the form of transfer (§ 90).

The calls must be paid before the shares can be sold (§ 91). The accounts are to be made up annually, and a dividend declared (§ 92). The directors may make dividends at intermediate times (§ 93). A fund for the repayment of money borrowed is to be set apart before a dividend can be declared (§ 94). The reserved fund is to be invested, and also the dividends, until a certain event (§ 95). Sect. 96, provides for ascertaining the proprietorship of shares in case of marriage, &c. The receipt of one proprietor of shares is to be deemed sufficient (§ 97). What shall be good service of notice on the company (§ 98). What shall be good service of notice by the company (§ 99). Sect. 100, provides for compelling witnesses to attend. Sect. 101, empowers the directors to grant releases to witnesses. Sect. 102, enacts that costs may be recovered by distress on the goods of the company. Persons injuring the cemetery are subject to a penalty (§ 103). Sect. 104 provides for the preventing of nuisances in the cemetery. The proprietors may be witnesses (§ 105). The application and recovery of penalties (§ 106); damages and charges in case of dispute are to be settled by two justices (§ 107). Justices are enabled to proceed by summons for the recovery of penalties (§ 108). Mode of securing offenders whose names, &c. are unknown (§ 109). The forms of information and conviction (§ 110). Distress is not to be unlawful for want of form (§ 111). Persons aggrieved may appeal to the quarter sessions (§ 112). Authenticated bye laws are allowed by the evidence (§ 113). Proceedings are not to be quashed for want of form (§ 114). The limitation of actions (§ 115). The plaintiff cannot recover after tender of amends (§ 116). Justices are empowered to administer oaths (§ 117). Rules for the construction of certain terms of the act (§ 118). The rights and powers of the commissioners of sewers are saved (§ 119). This shall be deemed a public act (§ 120).

REMARKABLE TRIALS.

No. XIX.

MOSES DRAYNE FOR MURDER.

In the year 1654, a Mr. Walter Kidderminster, who had been a steward of several gentlemen's estates in Cambridgeshire, and amassed a considerable sum, set out for London, where he had previously sent his wife. On his way, he stopped at the White Horse Inn, Chelmsford. Soon afterwards a report was spread that he was gone to Amsterdam, where his wife sent to inquire for him, but was assured he was not there. After some time, she heard he was at Cork, in Ireland; thither she also sent, and made a most diligent and exact search for him, both in Cork and Munster. Again there was a report that he was in Barbadoes, and they sent to Barbadoes to make inquiries after him. She

continued constantly inquiring after her husband, till her sister one day, in 1662 or 1663, reading the newspaper of the day, suddenly cried out, "Sister, here's news of your husband!" upon which she read in the news to this effect, viz. "That the bones of an unknown person, supposed to be robbed and murdered, were found buried in a back yard in Chelmsford. Whosoever can give notice of any person missing, let them give notice to Mr. Talcott, coroner, in Feering, or to the constable of Chelmsford, or to Mr. Roper, bookseller, over against St. Dunstan's Church, in Fleet street;" and upon comparing the time of her husband's being missing, with the time in the newspaper of the supposed murdered body's lying concealed, it appeared to be extremely probable; upon which she immediately went to Mr. Roper's, and by his advice set off for Chelmsford, and for want of conveyance went on foot with a friend.

On their way, they stopped at Romford, and learnt that one Sewell had kept the White Horse, at Chelmsford, at the time of the supposed murder; and that the ostler, who then lived there was at Romford. He was sent for, but refused to come forward. Mrs. Kidderminster then proceeded to Chelmsford, where she learnt from Mr. Turner, the new landlord of the inn, the circumstances of the discovery of the corpse. He had pales between his neighbour's meadow and his orchard: a great wind having blown them down, he resolved to make a mud wall; in digging which, they found a skull with all the teeth in it but one, and a hole in the left side of the skull about the size of a crown. Several country people came to see it, who had observed new turf laid upon the place. Upon digging on, they perceived that the corpse had been crammed in double. The coroner sat upon the bones, and the jury found a verdict of murder committed; a blow upon the side of the head was the cause of the person's death. At this time Sewell, who formerly kept the inn, and his wife and two daughters, were alive, and the ostler and maid-servant who lived in their family. Mr. Turner, to vindicate the reputation of the house, applied to the justices of the peace of the county, who issued out warrants against Sewell and his wife, who were taken before the justices, but upon their examination they denied all knowledge of the matter; the magistrates, however, bound them to appear at the next assizes, and Mr. Turner was bound to prosecute. Sewell died about a fortnight before the assizes, but it was suspected that he was poisoned by his wife. He shewed visible signs of a troubled mind. He often desired his wife to allow him to speak to some of the chief men of the town, for otherwise he could not die; which his wife would not permit. At the assizes Mrs. Sewell appeared, and nothing being positively proved against her, she was continued under bail till the next assizes, at which time the lord chief justice, Sir Orlando Bridgman, went the circuit, and finding that no clear account of the person murdered could be ascertained, nor who were the murderers, he ordered that no

tice should be inserted in the newspapers, at Lent assizes, by which means Mrs. Kidderminster had the first intimation of it.

Mrs. Kidderminster, returning from Chelmsford, made inquiry for the ostler, Moses Drayne. She asked him to describe the man who left his horse behind him when he was ostler at the White Horse, in Chelmsford,—what clothes he wore, for she had some suspicion it might be her husband. He answered, that the gentleman was a tall, big, portly man, with his own hair, dark brown, not very long, curled up at the ends; that he wore a black satin cap, and that his clothes were of a dark grey; which she found agreed with her husband's figure. She then asked him what hat he wore; he replied, "A black one," "Nay," said she, "my husband's was a grey one." At which words he changed colour several times, and never looked up in her face afterwards, but told her, that one Mary Kendall, who had been a servant at Chelmsford at the time of the gentleman's stay there, could inform her much better.

Drayne was committed to gaol, and after much trouble they traced out Mary Kendall. Before the next assizes Sewell's wife died. On the trial of Drayne, Mary Kendall deposed, "That she was servant-maid in the inn where the gentleman was murdered, and that she, having dressed herself in her best clothes, had leave of her master to go to Kilden, where her father lived; and upon her return home that night, her mistress bid her fetch a pair of sheets, and lay them upon the bed in the room called the King's Arms. When she came into the room, she found the gentleman standing with his back towards the fire, and with his hands behind him: he drank to her, and made her drink up her glass of beer, and bid her go and fetch him a napkin, to make him a cap. He asked her whether she was the man of the house's daughter, or his maid? she answered, she was his servant. The master and mistress being in the room all this while, and having supped together with the gentleman, he, in the presence of the maid and the mistress, delivered his cloak-bag to the master of the house, and told him there was in it near 600*l.* and writings of considerable value. Then her mistress bid her go to bed, and lie with the younger children in the farther end of the house, that being not her usual lodging, where she was locked in that night, and her mistress unlocked the door in the morning. She said, that between one and two of the clock in the morning, she heard a great fall of something, that it shook the room where she lay, though it was at the furthest part of the house. When she came down in the morning, she found her master and mistress, and the ostler, sitting very merrily at the fire, with a flaggon of drink before them, none of them having been in bed that night, nor the two daughters, Betty and Priss, who were appointed to lie in the same room where the maid used to lie. She not seeing the gentleman stirring in the morning, after sometime, asked her mistress if the gentleman was gone. "Yes," answered she, "though

you were so good a housewife, that you could not get up," and blamed her for lying in bed so long. She asked her mistress whether the gentlemen left her any thing. "Yes," said her mistress, "he left you a groat," and put her hand in her purse, and gave it her. "Then," said the maid, "I will go and make clean the chamber." "No," said the mistress, "my daughters and I have set that to rights already; do you what you are about, and then go to your flax-wheel." The chamber door was kept locked for eight or nine weeks afterwards, and no person admitted to enter it but themselves. Once she asked her mistress why that room was locked, and not kept clean for guests, as usual? The mistress answered, "they had no guests fit for that room, for it was kept for gentlemen."

"Some time afterwards, on a Sunday, her master gave her the key to fetch his cloak out of his chest, in his chamber; there she saw the gentleman's suit of clothes, and the cloak-bag, which she saw him deliver to them. About nine weeks afterwards, her mistress sent her up into the room where the gentleman had been murdered, to fetch something, it being the first time she had been in that room since it had been locked. She searched over the room, and looked upon the test of the bed, and there she saw the gentleman's hat, his hanger, boots, and the satin cap which she took off the gentleman's head, and hanged upon his hat, and laid it upon the table, when she made a cap of the napkin, and put it on the gentleman's head. She took the gentleman's hat, his hanger, boots, and cap, and carried them down to her mistress and the ostler. She asked her mistress—"You said the gentleman was gone to London in a coach; did he go without clothes, or did you lend him some? for I saw his clothes in my master's chest, and these things are his too." The ostler said, "you lie like a w—; those things are mine." The maid answered, "you are a rogue; I am sure they were the gentleman's; I know not whose they are now." Her mistress hearing the maid and the ostler quarrelling, she fell upon the maid, and there arose violent words betwixt them, when her mistress broke her head in three several places, so that the blood ran about her ears. The maid talked the louder, and asked her, "whether she intended to murder her, as she did the gentleman." Then her master hearing this disturbance, came to them, and persuaded her to hold her tongue and be quiet. She further deposed, that the ostler had from his master 60*l.* of the gentleman's money, for that some short time after the murder, he lent 60*l.* to a woman who kept the Greyhound inn in the same town; and that that must be the money, for the ostler was worth nothing of his own at the time of the murder; and that the ostler had the gentleman's clothes, which she had seen in her master's chest; and that the ostler sent them to one Clarke, a dyer, in Medsley, to have them dyed into a liver colour. The dyer asked him, "why he would have the colour altered; since they were of a better colour be-

fore?" The ostler answered, that he would have them dyed because he did not like the colour; and that about a twelvemonth after, he dyed the grey hat black. Then she deposed further, that her master raised himself to a good condition on a sudden; for before, he was so poor, that his landlord would not trust him for a quarter's rent, but would make him pay every six weeks; and that he could not be trusted for malt, but was forced to pay for one barrel under another. That shortly after, they bought a ruined malt-house, and new built it, and usually laid out 40*l.* in a day to buy barley. There was seen, upon a sudden, a great change in the daughters' condition, both as to their clothes, and otherwise; and if she bought but a hood for one of the daughters,

there was a piece of gold changed; and they were observed to have gold in great plenty."

This evidence was confirmed in several circumstances by other witnesses, two of whom proved, that between one and two in the morning of the night in question, they heard a noise in Sewell's house, and a man's voice, crying, "what, will you rob me of my money and murder me too? if you take my money spare my life." Then they heard something that fell very heavily, and a noise as of chairs and stools about the room, and all the lights put out. The servant of Mr. Kidderminster identified the cloaths of his master.

The prisoner was found guilty, and executed.

ATTORNEYS TO BE ADMITTED,

Hilary Term, 1833.

[*Concluded from p. 111.*]

Clerks' Names.

Phillips, Howell Jones, Norfolk Street, Strand.
 Pickup, William Clayton, 60, Great Russell Street.
 Pideock, Charles, 21, New Ormond Street, Queen Square.
 Piper, J., Denmark Hill, Surrey.
 Postlethwaite, J. Bateman, Whitehaven, Cumberland.
 Powell, Charles, Knaresborough, Yorkshire.
 Preston, Richard Rushton, Liverpool.
 Preston, Charles Abbott, Yarmouth.
 Price, William Evan, 14, Guilford Street, Russell Square.
 Pringle, Hall, Alnwick, Northumberland.
 Pritchard, Edward, the Lodge, Norwood, Surrey.
 Pritt, George, 23, Downing Street, Westminster.
 Pyke, John, (no residence entered.)
 Pyke, George, Gray's Inn Square.
 Redfern, R., Oldham, Lancashire.
 Riches, Alfred Smith, Norwich.
 Robins, Thomas, Conway, Wells, Somersetshire.
 Russell, William, 17, Queen's Row, Walworth, Surrey.
 Sainsbury, William Vince, Langford, Somersetshire.
 Sanithia, Edward, Taunton, Somersetshire.
 Selger, Thomas, York.
 Sewell, Robert Barleigh, Newport, Isle of Wight, Southampton.
 Sherwood, Richard William, Newport, Isle of Wight.

To whom articulated.

Phillips, Stephen Howell, the same place, now deceased.
 Carr, William, Blackburn, assigned to John Hargreaves, Blackburn, aforesaid.
 Fisher, Robert, Newport, Salop.
 Marten, George, Mincing Lane.
 Walker, Michael, Whitehaven, aforesaid.
 Powell, Samuel, the younger, of the same place.
 Watson, James Ottley, Liverpool, aforesaid.
 Preston, Isaac, the younger, Great Yarmouth.
 Smale, Charles, Bideford, Devonshire.
 Lambert, John, Alnwick, aforesaid.
 Sherwood, T. Edward, Dean Street, Southwark.
 Pritt, George Ashley, late of Liverpool, deceased, now with Thomas Blackstock, 18, Serjeant's Inn, Fleet Street.
 Welford, Richard, late of Marlborough, deceased, assigned to R. Griffiths Welford, Marlborough, and now of Gray's Inn.
 Hopkinson, Benjamin, Red Lion Square.
 Brown, Edward, of the same place.
 Jay, George, Norwich.
 Robins, Thomas, Wells, aforesaid, (now deceased,) assigned to Edmund Davies, Wells, aforesaid.
 Russell, Joshua, Lant Street, Southwark.
 Bradford, John Willmott, Langford.
 Mills, Thomas Milliken, of the same place.
 Sturgeson, Robert, York.
 Sewell, Thomas, Newport, aforesaid.
 Kirkpatrick, Richard Godman, Newport, aforesaid.

*Clerks' Names.**To whom articulated*

Sherwood, George, Abingdon, Berkshire.
 Smith, Frederick Wicking, Blackheath Park.
 Smith, Thomas Seddon, Liverpool.
 Smith, John Pridham, Devonport, Devonshire.
 Smythies, Henry, 39, Essex Street, Strand.

Spinks, John, the younger, 32, Doughty Street,
 Middlesex.

Stanley, John, Drayton in Hales, Salop.

Stenning, Benjamin, 8, Clifford's Inn.
 Stephens, Robert, Devonport, Devonshire.
 Stone, George, Gray's Inn Place.
 Stoughton, Clarke, Wymondham, Norfolk.
 Street, Thomas Leach, Lincoln's Inn Fields.
 Sutton, George Frederick Prince, 10, St. John's
 Wood Road, Regent's Park.

Taylor, William, Cockermouth, Cumberland.

Thomas, David, 27, New Millman Street.

Tomlin, William Fryer, 9, Wilmington Square.

Townson, Thomas, Lancaster.

Trail, John, 130, St. Alban's Place, Edgeware
 Road.

Tucker, Andrew, Moore's Terrace, Peckham,
 Surrey.

Turner, Charles, Darlington, Durham.

Twist, John Brown, Coventry.

Vigne, Augustus, Woodford, Essex.

Viner, Robert, Shiffnall, Salop.

Wade, Armigel, Great Dunmow, Essex.

Walker, William, Delahay Street, Westmin-
 ster.

Walton, William, 48, Lothbury.

Washbourne, Edward, Gloucester.

Weeks, Henry, 2, Raymond Buildings.

Weddall, James, Thorne, Yorkshire.

Welch, David, Newcastle-under-Lyne, Staf-
 fordshire.

Wheatley, Thomas, 54, Commercial Road,
 Lambeth.

Whellier, Sowdon, 14, Nicholl Square, Alders-
 gate Street.

White, Eustace, Old Dorset Place, Clapham
 Road.

Whittington, John, Charles' Street, Clerken-
 well.

Wilkinson, Charles George Graham, George
 Street, Adelphi.

Wilkinson, John, Lincoln.

Williams, Humphrey Lloyd, Llanfyllin, Mont-
 gomery.

Ormond, William, Wantage, Berkshire.

Lane, Charles, Lincoln's Inn Fields.

Holden, John, Liverpool.

Smith, John, Devonport.

James, John, Hereford, assigned to F. Lewis,
 Bodenham, Herefordshire.

Clarke, William, and Gazebrook Durley,
 Chertsey, Surrey, assigned to William Parry,
 Inner Temple.

Stanley, James, Drayton, aforesaid, assigned to
 Robert Michael Baxter, now of Lincoln's
 Inn Fields, lately under fresh articles of
 clerkship to James Stanley.

Stedman, Dewdney, Horsham, Sussex.

Leach, George, the same place.

Robinson, Stratford, Jermyn Street, St. James's.

Mitchel, John, Wymondham, aforesaid.

Baker, George Leeke, Lincoln's Inn Fields.

Lamb, Henry, Kettering, Northampton, and
 now a pupil with Thomas Platt, of Lincoln's
 Inn, Esq. Barrister at Law.

Fisher, John, the younger, late of Cocker-
 mouth, aforesaid, deceased.

Davies, James, Moor Court, Herefordshire.

Tomlin, Ottiwell, Richmond, Yorkshire, as-
 signed to James Williamson, Gray's Inn.

Willis, Richard, Lancaster.

Wright, John, Southampton Row, Edgeware
 Road.

Tucker, Charles Benjamin, Chard, Somerset-
 shire; assigned to John Huish Webber,
 Hatton Garden, and by him assigned to
 William Allexander, Clement's Inn, deces-
 ed, and afterwards assigned to Henry Clarke,
 Basinghall Street.

Jackson, Henry, Kirkby Stephen, Westmore-
 land.

Twist, John, Coventry.

Rickards, George, Basinghall Street.

Brown, Gilbert, Shiffnall, aforesaid.

Wade, George, Great Dunmow, aforesaid.

Hayes, Thomas Porrett, Bedford Row.

Knight, Charles, Church Court, Clement's
 Lane, London.

Bonner, Benjamin, Gloucester.

Lloyd, John Thomas, Shrewsbury, Salop,
 (since deceased.)

Beckitt, William, Thorne, aforesaid.

Hyatt, J. Ford, of the same place.

Jupp, Richard Webb, Carpenter's Hall.

Barton, Henry Downe, Exeter.

Osborn, John Curling, Coleman Street, de-
 ceased, assigned to Thomas Hilton Botham-
 ley, Coleman Street.

Evans, William, Bath.

Lawrence, Edward, Bucklersbury, assigned to
 Charles Wilkinson, Bucklersbury.

Hayward, Charles, Lincoln.

Williams, John Jones, Dolgelly, Merioneth,
 assigned to Maurice Bibby, Llanfyllin,
 aforesaid.

Clerks' Names.

Williams, James, Cardiff, Glamorganshire.
Williams, James, St. Mary's, Cardiff, Glamorganshire.
Willoby, Edward, 9, New Millman Street.
Woolley, Thomas, 29, Park Street, Islington.
Wragge, George Paulson, Birmingham.
Wright, Thomas, Long Acre.
Wynne, Robert, Staple Inn.

To whom articulated.

Reece, Richard Lewis, Cardiff, aforesaid.
Reece, Richard Lewis, Cardiff, aforesaid.
Willoby, William, Berwick-upon-Tweed.
Woolley, Charles, late of Hoxton Square, now of Liverpool Street, Broad Street.
Ingleby, Clement, Birmingham.
Barker, William, Mark Lane.
Hinde, William, Liverpool.

SUPERIOR COURTS.

Rolls Court.

LEGACY—LIABILITY TO CREDITORS ON INSOLVENCY.

A legacy cannot be so limited as to be enjoyed by the legatee after insolvency, in opposition to the just claims of his creditors.

A., a testator, bequeathed 400*l.* to his executors, upon trust to apply the same and the interest thereof to the sole use and benefit of his son B., at such times, in such manner, and such sums as they in their judgment should think fit; and in case of the death of B. before the legacy should have been so applied, the testator directed the unapplied portion of it to become part of his residuary estate, which he gave to another legatee. The son B., became insolvent soon after the death of the testator, having, however, before his insolvency, received from the executors about 160*l.* He also received several small sums afterwards.

The assignees of the insolvent filed their bill against the executors, calling upon them to account for and pay over to them so much of the legacy as remained unpaid in their hands at the time of B.'s insolvency.

Mr. Bickersteth and Mr. Girdlestone, for the assignees, submitted that it was a clear and settled rule, that property could not be so limited as to continue in the enjoyment of a bankrupt after his bankruptcy. The same rule applied to an insolvent, whose interest in a legacy passed to his assignees after his insolvency. The policy of the law generally prevented a man from limiting the enjoyment of a bequest so as to withdraw it from all liability to the claims of creditors.

Mr. Pemberton, for the defendant, said, that in all the cases to which the present was supposed to be analogous, and to which the rules of law referred to applied, a vested interest was given to the legatee; but a discretionary power was given to the executors over this legacy, and a portion of it was given over, in the event of his death, before all was paid to him. The law, and the rules of this Court, allowed a legacy, or a part of it, to be given over absolutely in the event of the insolvency of a legatee; there was no reason, therefore, that it may not be given over conditionally.

Mr. Bickersteth in reply. No doubt of it; a testator might limit over a bequest in the event of the insolvency of a legatee; but here it was given over in the event of death, and not of insolvency, which last was not in the contemplation of the testator. The executors, by continuing to pay the legacy to the legatee after his insolvency, clearly manifested such an intention of continuing to him such an enjoyment of the legacy as the policy of the law prohibited.

The Master of the Rolls was clearly of opinion, that the policy of the law did not allow property to be limited in such a manner as to be enjoyed by an insolvent in opposition to the just claims of his creditors; and that the discretion vested in the executors by the testator, determined with the insolvency of the legatee.

Piercy v. Roberts, Westminster, Michaelmas Term, 1832. M. R.

POLICY OF INSURANCE.—SECURITY FOR A DEBT.

*A. lends 100*l.* to B., and effects an insurance to double that amount on B.'s life; the latter paying the premium on the policy, but no interest for the loan. Held, that the policy is substantially the policy of B., and that B.'s representative is at any time entitled to the produce thereof, after paying the principal and interest of the loan, for both which the policy was a security.*

The bill in this case—which was filed by the personal representative of a Miss Hill—stated, among other things, that she had in the year 1789, borrowed the sum of 100*l.* of a Dr. Walker, to whom a policy of insurance for 200*l.*, effected on Miss Hill's life, was granted by the Equitable Assurance Company. Miss Hill paid regularly the annual premium on the policy of insurance; but it was not stated, nor did it appear, that she ever paid the interest of the money borrowed. Upon the death of Dr. Walker, in 1826, his executors claimed a beneficial interest in the policy; and from that time kept up the annual payment of the premium, Miss Hill having discontinued to pay it. Upon her death, some time after, the value of the policy having been then greatly increased by the addition of large bonuses from time to time, and amounting in the whole to the sum of 796*l.*; the plaintiff, her

representative, sought to recover the whole value, offering to pay to the executors of Dr. Walker, the principal sum of the loan of 100*l.*, with interest ever since it was lent.

The principal question in the cause was, whether there had been an agreement on the part of Miss Hill to give up all interest in the policy in consideration of the lender's forbearance to claim interest; or whether the policy had been taken as a security for both principal and interest of the loan; in which latter case the executors of Dr. Walker were to be considered as trustees for the representative of Miss Hill, for the excess of the proceeds of the policy beyond the principal and interest of the original loan. In support of this latter construction, a letter from Dr. Walker himself, dated several years back, was read; and from it the inference was clear, that he considered the policy of insurance in no other light than as a security for the principal and interest of the loan.

The Master of the Rolls decided that the plaintiff was entitled to the value of the policy after payment of the debt and interest, the insurance effected in the name of Dr. Walker being, in His Honour's opinion, substantially the insurance of Miss Hill. He would not, however, give costs against the defendants, as they, the executors of Dr. Walker, in whose name the policy was effected, and who, therefore, had the legal interest in it, were justified in resisting the claim. It would be different if Dr. Walker himself had been the person resisting the demand.

Simpson v. Walker and another, Westminster, Michaelmas Term, 1802. M. R.

King's Bench Practice Court.

AWARD.—COSTS.—ATTACHMENT.—DEMAND.

If a rule is enlarged by consent from one term to another, no advantage can be taken of the want of its personal service.

Directing a verdict to be entered for a certain sum, is equivalent to ordering that sum to be paid.

In this case, an action was brought to recover a certain sum, alleged to be due from the defendant to the plaintiff. Before trial, the cause was referred to an arbitrator. He not remembering that the matters in difference were not referred to him by an order at *Nisi Prius*, directed a verdict to be entered for 204*l.*, and ordered the defendant to pay the costs of the reference, which amounted to the sum of 48*l.* These two sums were demanded, but not paid. A rule nisi for an attachment was obtained in the Trinity Term, and enlarged by consent to Michaelmas Term.

Alexander now shewed cause, and contended, that as the rule for an attachment had not been personally served, the Court could not make it absolute.

Littledale, J. thought it too late to take advantage of that objection, now that the rule had been enlarged by consent.

Alexander then contended, that as the arbitrator here had only in fact found that a certain sum was due from the defendant to the plaintiff, and had made no order for the payment of that sum, the defendant could not be in contempt by not paying it. Before a party could be in contempt for not performing an award, he must have disobeyed some order contained in that award. No order being contained in this award, the defendant could not be in contempt for not performing it.

Littledale, J.—Although the arbitrator has not directed that a certain sum shall be paid, he has done that which is tantamount to such a direction; for he has directed a verdict to be entered, which is giving the means to the plaintiff of enforcing payment of the sum for which the verdict is to be entered. The rule must therefore be made absolute.

Rule absolute.—*Cartwright v. Blackworth*, Nov. 6th. 1832. K. B. P. C.

SIGNING JUDGMENT.—SERVICE.

Where several attempts were made to summon a defendant on a sci. fa., returnable on the 28th April, and eight days had elapsed after the return of the writ; an application on the 5th November for sign judgment, was held too late, without summoning the defendant again.

Butt moved to be allowed to sign judgment on a sci. fa. The writ was returnable on the 28th of April, and various attempts had been made to summon the defendant. According to 1 Reg. Gen. H. T. 2 W. 4, § 81, the plaintiff was entitled to sign judgment, eight days having expired since the return of one sci. fa.

Littledale, J.—You must either issue two writs of sci. fa. or summon the defendant. But you ought, in either case, to come within a reasonable time. You are now too late to obtain judgment on the writ you have issued, unless you summon the defendant again.

Rule refused.—*Wood v. Morely*, Nov. 5th, 1832.

NOTES OF THE WEEK.

THE REVISING BARRISTERS.

We understand that it has been distinctly stated by one of the Secretaries of the Treasury, that the Revising Barristers are not to receive the remuneration to which they are entitled under the Reform Act, for at least six months after it has become due. We think that this is a little unfair. Not only are these gentlemen deprived of the sums allowed them by the Act, but, as is well known, they have defrayed considerable sums for their expenses. Now it is to be recollected, that many of the barristers appointed are young men, and that a con-

ple of hundred pounds out, instead of in pocket, may be of considerable inconvenience; whilst on the other hand, it is difficult to see what difference it can make to Government, whether they pay thirty thousand pounds—which would probably be all the money required—in the year 1832 or the year 1833. We trust, therefore, that we have been misinformed as to their intention; or if not, that they will reconsider it.

REVISION OF SOLICITORS' COSTS.

We have received several communications on the subject of the Costs of Solicitors in the various departments of practice. It seems generally admitted that the taxed costs, as between party and party, in Common Law proceedings, do not afford a sufficient remuneration to the practitioner. In the Courts of Equity the allowance is somewhat better; but the payment so protracted, that the advantage is neutralized. On the other hand, it is said, the charges in Conveyancing business, which are not liable to taxation, are too high. The expense to one party, of investigating a title, and to the other of establishing it, and removing all doubts and objections, is in many cases disproportioned to the value of the property;—but so also is the expense of determining causes of small pecuniary amount, whether at Law or in Equity. *The whole question ought IMMEDIATELY to be reviewed,* and we are persuaded the public, both from justice and policy, are willing a liberal scale of allowance should be established.

In the mean time, it cannot be denied that the practitioner has good ground to complain that his emoluments are, term after term, and session after session, diminished, and he is expected to be satisfied with the promise that, at a proper season, his claims will be duly considered and fairly adjusted. Whether from the want of union or activity in the general body of practitioners, or from deficiency in tact, we know not; but certain it is, the subject of Costs seems indefinitely postponed.

It was probably in this feeling that a Correspondent (whose letter we inserted last week) made some impatient comments on the remarks of the Law Professor at King's College, on bills of costs for conveyancing. We cannot believe that the learned Professor entertains any other opinion than the Real Property Commissioners, who "think it for the public good that solicitors should be liberally remunerated for their services;"

—and who expressed their opinion "that a considerable part of the duty of solicitors required much skill and care, and imposed great responsibility, for which they are, at present, very inadequately remunerated." "Considering also the confidence reposed in them, and the intelligence and skill required from them, it is desirable (say the Commissioners) that they should be men of education and of honorable feelings, and should occupy a respectable station. In their opinion, it would be highly inexpedient that the rank which they hold in this country should be lowered."

ANSWERS TO QUERIES.

Common Law.

BANKRUPTCY.—TROVER. P. 51.

In cases of this nature, a distinction has naturally been taken where the vendor retakes the goods adversely against the purchaser, as in that of stoppage *in transitu*, and where not, as in the present instance. See *Assignees of Browne v. Wray*, 6 East, 371. For here the vendor does not get possession of the goods by his own diligence and care, or in consequence of some casual information, but through the intervention of the bankrupt himself. It depends, therefore, upon the facts alone, whether an undue preference has not been thereby shewn him over the rest of the creditors. Where the consignee of goods, being insolvent, and having committed an act of bankruptcy, wrote to the consignor, to inform him of his circumstances, and to say he would not receive the goods, in consequence of which the consignor obtained possession whilst they were *in transitu*; the Court held, but apparently with great doubt, he was entitled to retain them as against the assignees. *Mills v. Bull*, 2 Bos. & Pull. 457. So also, in the more recent case of *Bartram v. Fairbrother*, 4 Bing. 579, where P., to whom goods were consigned, said, on their arrival at the wharfingers, he would not receive them, and directed an attorney to stop them, who accordingly gave the wharfinger an order not to deliver them to the consignee, which order the consignor wrote to confirm three days afterwards, and on the very next day the goods were claimed under an execution at the suit of A.: it was held, that the contract between P. and the consignor was rescinded; that the *transitus* was not ended by the arrival of the goods at the wharf, and the order given by P.; and that the consignor had accordingly a right to stop them. In both these instances, however, it must be observed, that the goods were then *in transitu*; in other words, had never been in the actual or constructive possession of the vendee. In the former case, indeed, *Rooke, J.*, observed, "If the consignee, after getting the goods into his hands, had given

them up, the case would have been very different." This latter point was expressly determined in *Barnes v. Freeland*, 6 T. R. 80, deciding, that where a sale of goods has been completed by actual delivery to the buyer, who afterwards becomes insolvent, before they are paid for, he cannot rescind the contract and return the goods, with the consent of the seller, so as to give him a preference over his other creditors. In answer to your correspondent J. J., therefore, I think it pretty clear, that *A. B.* having once had possession of the barley, could not, under the circumstances, legally return it. Admitting, however, that the assignees can establish their claim to the goods, payment or tender of the price is a condition precedent on their part; for in order to bring *trover*, a party must have a right of possession as well as a right of property, and a vendee does not acquire a right of possession until he pays or tenders the price. See *Blossam v. Sanders*, 4 B. & C. 941.

MANCUNIENSIS.

STATUTE OF LIMITATIONS. PP. 35, 66.

I do not understand what is meant by the generality of the words in the advertisement being restrained by the intention of *A. B.* The case is not one of intention, but a mere question of law, whether such an advertisement has or has not the effect of reviving debts barred by the Statute of Limitations. The first case on the point is *Andrews v. Brown*, Prec. in Chan. 385, which is a direct authority in the affirmative; and that case, although overruled on other points, still remains unimpeached, with regard to the one now in question. In the case of *Jones v. Scott*, 1 Russ. & Myne, 255, the Vice-Chancellor drew a distinction between the advertisement in that case and the one in *Andrews v. Brown*, thereby virtually recognizing it as an authority: and the Lord Chancellor, who, on appeal, reversed the decision of the Vice-Chancellor in *Jones v. Scott*, on another point, also cited the case of *Andrews v. Brown*, as an authority, such as it was: and although the Lord Chancellor seemed to consider the book in which that case was reported, as a book of not much authority, it is probable that he may have confounded it with some other book of less authority; perhaps the Cases Tempore Finch; for among the reports of an earlier date, the book entitled "Precedents in Chancery" has been always considered by equity lawyers as one of the most valuable. I think that it may be fairly presumed, that an advertisement in a newspaper is a sufficient acknowledgment of a debt, under the 9 G. 4, c. 14; or the arguments, with respect to the advertisement in *Jones v. Scott*, would have been met by that statute.

E. G.

SET-OFF. P. 15.

It appears by *Coppin v. Walker*, 2 Marshall, 497, and *Coppin v. Craig*, 2 Marshall, 501,

that a purchaser can set off a debt due to him by the alleged owner of the goods, in an action commenced by an auctioneer.

STUDIOSUS.

State of Property and Conveyancing.

TRUST FOR SALE.—PURCHASER. P. 116.

There is nothing in this case which can *prima facie* prevent *B.* from becoming the purchaser; but I think that a Court of Equity would look with extreme jealousy on such a purchase, and would compel *B.* to prove that he had acted *bona fide*; and on his failing to do so, or on *A.* proving that *B.* had acted fraudulently, it appears to me that the Court would annul the sale.

X. Y.

State of Landlord and Tenant.

DISTRESS BY EXECUTORS. VOL. IV. P. 320. Et vide 351, 366.

The following authorities have decided, that on a lease for years made by a tenant in *fee simple*, his executors may legally distrain, in pursuance of the provisions of the stat. 32 Hen. 8. c. 37, for rent in arrear during his lifetime: *Powell v. Killick*, 2 Bull. N. P. 57; *Selw. N. P. 679*; *Moreton v. Gilbee*, 2 J. B. Moore, 48; 8 Taunt. 159. *Martin v. Barton*, 1 B. & B. 279. *Stamford v. Sinclair*, 2 Bing. 123. It appears to me that these cases are quite irreconcilable with principle, inasmuch as the *seisin of the land* excludes the idea of the *seisin of the rent* arising out of it; and the executors of those seised of the *rent* only, are mentioned in the statute. In the last of these cases, the Judges stated explicitly, that the statute, being a remedial one, ought to receive a liberal construction. I readily admit this. I do not complain of the provisions of the stat. 32 Hen. 8. being applied to the case of executors of a tenant in *fee simple*; but it appears to me, that the Judges have extended the construction of this statute farther than is consistent with their judicial functions, without the aid of a legislative enactment; and that, therefore, implicit faith cannot be placed on the authority of these decisions. I believe they have not met with the unqualified approbation of the profession; and it has been recommended to the executors of a tenant in *fee simple*, to resort to their common law remedy, of an action for rent, in preference to making a distress, on the authority of the cases cited, especially as they will not be liable to costs as *plaintiffs*, though they would as *defendants*, in an action of replevin. *Vide* 23 Hen. 8. c. 15, referred to by T. P., 4 L. O. 297.

A STUDENT.

DELIVERY OF POSSESSION UNDER THE STATUTE. P. 67.

The difficulty in this case appears to be, whether or not the tenant's desertion of the premises arose from the arrest by the landlord; as in such event, the desertion of the

premises being the effect of the compulsory act of the landlord, he could not, I apprehend, avail himself of the statute. But if the tenant's quitting the premises was not the immediate effect of the arrest, I apprehend the justices would be bound to deliver possession, because the remedy given by the act is cumulative; and there is not, I apprehend, any cause why a landlord shall not commence an action for rent, and apply to the magistrates for possession of the premises deserted, pending the proceedings in the action. The right of a party aggrieved to seek for redress by resorting to two or more remedies at once, is recognized in the cases of *Burnell v. Martin*, 2 Doug. 417; *Colley v. Gibson*, 3 Smith, 516; in the latter of which cases, the plaintiff, who was a mortgagee, pursued three different modes of obtaining relief, *vis.* by bill of foreclosure, action of ejectment, and action of covenant; and although the plaintiff was in possession under the ejectment, the Court refused to discharge the defendant out of execution in the action of covenant, on the ground that the plaintiff has a right to his remedy on all his securities. C. H. I.

DISTRESS.—LODGER.—BOARD. P. 100.

In the event of an action being brought against the tenant by the lodger, for the seizure by the landlord (which would be in the nature of a special action on the case for damages), I take it to be quite clear that the tenant could not set off the sum due for board and lodging. By the 2 G. 2. c. 22. § 13, "where there are mutual debts between the plaintiff and defendant, one debt may be set against the other." And by 8 G. 2. c. 24, § 5, "mutual debts may be set against each other, notwithstanding such debts are deemed in law of a different nature, unless in cases where either of such debts accrue by reason of a penalty in any bond or penalty." The only actions in which a set-off is allowable upon these statutes are *debt*, *covenant*, and *assumpsit*, for the nonpayment of money; and a set-off is never allowed in actions upon the *case*, *trespass*, or *replevin*; nor in *assumpsit* for general damages. See Tidd's Practice, and the notes of cases there referred to. W. H.—x.

Rate of Attorneys.

ADMISSION.—CLERKSHIP. P. 67.

1. When *A.* is admitted, he may take out his certificate forthwith, which (though 6*l.*, the duty for a year, is required to be paid) will expire the 15th of November next. He will sustain no loss thereby; as at the renewal of his certificate in 1835, he will not have been admitted three years, and his then (though fourth) certificate will only bear the less duty. My case was exactly similar. C. H. I.

2. By 54 G. 3. c. 144, (*not* 37 G. 3. c. 90), certificates for attorneys, &c. shall be annually taken out between the 15th November and the 16th December. The construction of which is, that if certificates are taken out on any day between the 15th of November and the 16th of December, the same shall be dated on the

former day; but if taken out subsequent to the latter day, they shall be dated on the day they are taken out. **STUDIOSUS.**

QUERIES.

Rate of Property and Compensating.

BEQUEST.—INTEREST ON LEGACY.

A. by will charges her real estate with the payment of a legacy to *B.*, payable twelve months after her death, with "*lawful interest*" from the time of her decease. What rate of interest is *B.* entitled to? *A.*

DEVISE.—ENTAIL.—RECOVERY.

Testator devised to trustees, their heirs and assigns for ever, in strict and special trusts to preserve contingent remainders, all his real estates, to the use of *S. C.* and her assigns for life, and after that estate, to the use of all and every child and children of the said *S. C.* to be equally divided between them as tenants in common, and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every such child or children lawfully begotten; and in case any one or more of such children should happen to die without issue of his, her, or their body or bodies lawfully begotten, then to the survivors, &c. as tenants in common, and not as joint tenants, and of the several and respective heirs of the bodies and body of such survivor or survivors, and others or other of them, and for want of such issue, to remainders over in special trust. *S. C.* dies, leaving three children, Sarah, John, and Mary; Mary dies unmarried; John is living, and has issue one son; Sarah married *F. M.*, by whom she has issue one son. On the death of *S. C.*, the tenant for life, Sarah, with the consent of her husband, and John, the tenants in tail, suffer a recovery, such two sons of Sarah and John being in esse. The son of Sarah five years of age.

1. Was this a valid recovery, and is the respective issue of Sarah and John barred by it?

2. The trustees having been made parties to the recovery, in the event of their *not* being so, will not that make the recovery void?

It is very desirable your able contributors should cite the latest authorities in the elucidation of this abstruse part of the Law of Real Property. H. H. P.

The recovery being suffered in Wales (the property lying there) before the consolidation of the Welsh Courts with those of Westminster, where can a copy of the recovery be obtained? The officers for the recording of English recoveries being unable to give the least information.

REPUTED OWNERSHIP.

Two years ago *A. B.* purchased certain furniture and effects in an hotel, and shortly afterwards, by deed of settlement, devised the same to trustees, in trust for herself for life, and then to the children of the marriage. The marriage was immediately solemnized, and the

husband and wife have been keeping the hotel; the husband has now become bankrupt. Can the assignees recover this furniture on the ground of "Reputed Ownership," the husband having been trusted upon the credit of the furniture? R. L. T.

State of Landlord and Tenant.

RESPONSIBILITY TO LODGERS.

Is a person who lets unfurnished apartments, and provides the lodgers a key of the street door to let themselves in and out at their pleasure, responsible for the safety of the lodgers' goods in their absence, where there is no agreement to that effect? J. B.

Common Law.

LIABILITY FOR LOST GOODS.

A leaves articles of wearing apparel with a publican of a village, with directions to deliver them at a private house in a town a few miles distant, till called for. By mistake they were delivered at a public house adjoining the private one, the wife of the keeper of which took charge of them till called for. The same being afterwards lost, is the publican, at whose house they were delivered by mistake, liable to the owner in recompense, for not taking care of and re-delivering goods entrusted to his care? W. K. R.

Practice.

HOLDING TO BAIL.—INTEREST.

In an affidavit to hold to bail on a promissory note payable on demand, and interest thereon, is it necessary to allege how much is due for interest? If so, could the defendant apply to be discharged on filing common bail, if it was not so distinguished? W. H.

PROCESS ACT.—PROCEEDINGS BY ORIGINAL.

Does the Uniformity of Process Act do away with the proceedings by original? It appears that the writ of summons is to be the only writ for the commencement of personal actions, whether against privileged persons or not. A SUBSCRIBER.

State of Attorneys.

NOTICE OF ADMISSION.

If I fix my notices in next term, can I by any new rule, or otherwise, obtain admission before next Michaelmas term? Q.

ARTICLED CLERKS.

On the 10th December, 1830, I was articulated to an attorney, with whom I served till the 10th November, 1831, at which period I obtained a public appointment in France, to which place I removed, with the consent and approbation of the gentleman with whom I was serving my articles. I have, however, now resigned my appointment, and am desirous of serving out my articles, and the gentleman to whom I was articulated has consented to take me again into his office. What period, therefore, must I serve from the 10th December, 1832, to entitle me to admission? and what indorsement, and what new stamp, must appear on the original articles? STUDENT.

MISCELLANEA.

THE RACK.—FELTON'S CASE, 1628.

Felton, who had assassinated the Duke of Buckingham, was brought before the Council, and threatened with the rack by Lord Dorset, who said, "Mr. Felton, it is the King's pleasure that you should be put to the torture, to make you confess your accomplices, and therefore prepare yourself for the rack." Felton answered, "My lord, I do not believe that it is the King's pleasure, for he is a just and a gracious prince, and will not have his subjects tortured against law. I do affirm, upon my salvation, that my purpose was not known to any man living; but if it be his Majesty's pleasure, I am ready to suffer whatever his Majesty will have inflicted upon me. Yet this I must tell you by the way, that if I be put upon the rack, I will accuse you my Lord of Dorset, and none but yourself." This firm and sensible speech silenced them.

Felton was a man of melancholy and retired habits, and one of those thousand officers who had incurred disappointments, both in promotion and in arrears of pay, from the careless duke; he felt, perhaps, although he denied it, a degree of personal animosity towards him. A solitary man, who conceives himself injured, broods over his revenge, Felton once cut off a piece of his own finger, inclosing it in a challenge, to convince the person whom he addressed, that he valued not endangering his whole body, provided it afforded him an opportunity of vengeance.

The council then debated, whether by the law of the land they could justify the putting him to the rack: the King, being at council, said, before any such thing should be done, let the advice of the judges be had therein, whether it be legal or not; and afterwards his Majesty, on the 13th of November, propounded the question to Sir Thomas Richardson, Lord Chief Justice of the Common Pleas, to be propounded to all the justices, viz. Felton, now a prisoner in the Tower, having confessed that he had killed the Duke of Buckingham, and said he was induced to this, partly for private displeasure, and partly by reason of remonstrance in parliament, the question therefore was, whether by the law he might not be racked, and whether there was any law against it? for (said the King) if it might be done by law, he would not use his prerogative in this point; and, having put this question to the Lord Chief Justice, the King commanded him to demand the resolutions of all the judges. First, the justices of Serjeant's Inn, in Chancery Lane, met and agreed, that the King could not, in this case, put the party to the rack. And on the 14th of November, all the justices being assembled at Serjeant's Inn, in Fleet Street, agreed in one, that he ought not, by the law, to be tortured by the rack, for no such punishment was known or allowed by our law.

The Legal Observer.

VOL. V.

SATURDAY, DECEMBER 22, 1832. No. CXV.

——— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

THE ELECTIONS.

LAWYERS are seldom returned for counties; and in the present contest we do not hear of a single nomination of this kind. As the borough elections for England therefore are now finished, we know pretty well all the lawyers who will be in the present House of Commons. It will be found, we think, that among them parties are more equally balanced than might be expected. Throughout the country, it must certainly be admitted that the conservatives have fared but badly; they have had great difficulty in securing the return even of their leaders. The Reform Act has worked well for its introducers. As disinterested observers, we consider that the party now in power, by whatever name they may be called, may with proper management count on a twenty years' lease of their rule. Amongst the lawyers, however, we repeat that parties will be found to be nearly equally divided, if the *ins* and *outs* are to be numbered.

We shall now continue our running account of "our" members.—If Sir Charles Wetherell and Sir Edward Sugden have been beaten on the one side, on the other Mr. Serjeant Wilde has been defeated at Newark, and Mr. John Williams at Bristol. Mr. Pepys has been returned for Malton in Yorkshire; and if sound judgment and liberal feeling fit a man to be the representative of his fellow citizens, he is well entitled to the distinction. Mr. Pem-

berton, we much regret to find, did not go to a poll at Taunton. His eloquence and ability, had he been returned, would have increased the character he had already obtained in the House. Mr. Twiss has lost Bridgewater; but our regret is not so great at this. Mr. M. D. Hill has been returned for Hull, and Mr. Rolfe for Penryn. They will both support the present administration. Mr. Lynch has been elected for Galway, and is a "repealer."

The present House will not be found wanting in a proper share of the more youthful portion of the bar. Sir George Grey, a nephew of the premier, has come in for Devonport. He will of course support the present administration. Mr. Godson has succeeded at Kidderminster; Mr. Romilly at Bridport; Mr. J. H. Lloyd, at Stockport; Mr. John Jervis, at Chester; and Mr. Rotch, at Knaresborough. Who shall pretend to say which of these will "wield at will the fierce democracy!"

Mr. Wilks has been successful at Boston; Mr. Tooke at Truro; and we would fain have added, that Mr. Freshfield, a most useful and intelligent member, had been returned for Penryn. He was however unfortunate.

We may thus perhaps class the lawyers returned.

The Conservatives are—

Sir James Scarlett.

Mr. Frederick Pollock.

As the supporters of the present administration, we find—

The Attorney General.

The Solicitor General.
 Mr. William Brougham.
 Mr. Pepys.
 Mr. Hill.
 Mr. Rolfe.
 Sir George Grey.
 Mr. Wilks.

Among those who are reckoned of a more "liberal" class, we believe may be named—

Mr. Lynch.
 Mr. John Jervis.
 Mr. J. H. Lloyd.
 Mr. Tooke.
 Mr. D. W. Harvey.
 Mr. Faithful.

And among the Doubtful—

Mr. Serjeant Spankie.
 Mr. Tancred.
 Mr. Godson.
 Mr. Romilly.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIA- MENT, 1831—1832.

No. X.

Criminal Law.

FORGERY. 2 & 3 W. 4, c. 59.

THE next Act, to which we shall call attention, is chapter 59. The title of that Act is, "An Act to transfer the Management of certain Annuities on Lives from the Receipt of His Majesty's Exchequer to the Management of the Commissioners for the Reduction of the National Debt; and to amend an Act for enabling the said Commissioners to grant Life Annuities, and Annuities for Terms of Years." From the title of this Act, one would not anticipate that any change in the Criminal Law would be contained in it. Some very important changes, however, in that branch of the law, are effected by it. In § 19, various offences in the nature of *Forgery*, connected with the subject of the Act, are made punishable with death. The effect of this provision will be in many instances to introduce a greater degree of punishment than could be inflicted in similar cases by the operation of the general Forgery Act, the 2 & 3 W. 4, c. 123, the provisions of which we shall hereafter consider. It was enacted by the 11 G. 4, and 1 W. 4, c. 66, § 1, that if any person should be convicted of any forgery, or other offence therein named or described, for which he would at the time of passing that act have been liable to the punishment of Death, he

should not suffer death for it, unless it should be made punishable with death by that Act. All the offences described in § 19, of the Act now under consideration, come within the provisions of the 11 G. 4, and 1 W. 4, c. 66. That Act directed various punishments, by death, transportation, &c. to be inflicted. The 2 & 3 W. 4, c. 123, § 1, abolishes the punishment of death in all cases where death might be inflicted under the 11 G. 4, and 1 W. 4, c. 66, except (by § 2) in the case of forging wills and powers of attorney to transfer public stock, and substitutes the punishment of transportation for life; but it does not interfere with offences punishable with less severity than death by the 11 G. 4, and 1 W. 4, c. 66. Consequently, all the offences enumerated in § 19 of c. 59, will be punishable with death by that section, while several of them, by the operation of the 2 & 3 W. 4, c. 123, § 1, on the 11 G. 4, and 1 W. 4, c. 66, will be punishable with transportation for life only. But c. 123, having received the royal assent at a later period of the session than c. 59; the offences within the provisions of both Acts will be punishable under c. 123. These are certain offences punishable with death under the 11 G. 4, and 1 W. 4, c. 66. The other offences enumerated in § 19, which were not punishable with death under the 11 G. 4, and 1 W. 4, not coming within the meaning of the 2 & 3 W. 4, c. 123, will be punishable under § 19 of c. 59. The effect of this Act will therefore be naturally to increase the punishment in several cases of forgery, and its kindred offences.

The offences of forging, &c. any declaration, transfer, &c., mentioned in § 19, would, under the 11 G. 4, and 1 W. 4, c. 66, § 1, have been punishable with transportation for life; and the forging of any certificate, order, &c. for payment of money, would have been punishable with death under § 3 of the last cited Statute; but by the operation of 2 & 3 W. 4, c. 123, § 1, they are punishable with transportation for life only. The offence as to transfers, &c. in the books of the commissioners, was punishable with death by 11 G. 4, and 1 W. 4, c. 66, § 5; but by the operation of 2 & 3 W. 4, c. 123, § 1, with transportation for life only. The offence of forging any receipt, &c. was punishable under 11 G. 4, and 1 W. 4, c. 66, § 10; with transportation for life, &c.; but by the present Act, with death. The offence as to letters of attorney, &c. was punishable with death

under 11 G. 4, and 1 W. 4, c. 66. § 6, and is so punishable under this Act, and is unaffected by 2 & 3 W. 4, c. 123. § 1. Under the 11 G. 4, and 1 W. 4, c. 66, the offences as to personation (§ 1); uttering forged registers (§ 20); declarations, affidavits, &c. (§ 1); were punishable with transportation for life; but under the above Act, with death.

THEFT. 2 & 3 W. 4, c. 62.

Chapter 62, which abolishes the punishment of death for Cattle-stealing, and Stealing to the amount of Five Pounds in a Dwelling-house, has already been the subject of our remarks, Vol. IV. p. 211.

FORGERY. 2 & 3 W. 4, c. 123.

By chapter 123, the punishment of death in all cases of Forgery punishable with death under the 11 G. 4, and 1 W. 4, c. 66, is repealed, except (by § 2.) in the case of forgery of wills, and powers of attorney to transfer public funds. In § 3, a very important change is introduced in the mode of drawing indictments for forgery. It was necessary hitherto to set forth in an indictment for forgery, a copy of the alleged forged instrument. Constant difficulties arose in convicting offenders, from variances between the instrument alleged, and that produced in evidence. No amendment could take place in such cases, because the 9 G. 4, c. 15, only applied to civil actions, and indictments or informations for misdemeanors. The section last cited enables prosecutors to describe forged instruments in the same manner as is necessary to sustain an indictment for stealing such instruments. By reference to the 7 & 8 G. 4, c. 29. §§ 5, 21, 23, & 24, the mode of describing such instruments will appear. These sections will give sufficient information as to the mode of charging the offence in these cases, where the matter forged is the subject of larceny. But there are many things the subject of forgery, but which are not the subject of larceny. For instance, the forgery of an order or request for the delivery or transfer of goods, is punishable with transportation for life: but the stealing of such a document is not the subject of larceny. As no fac simile or copy of the alleged forged matter need now (by § 3 of the above act) be introduced in an indictment for forgery, and as no direction is given as to the mode, in which matters not

the subject of larceny are to be described, they must of course be described in the same manner as any other matter or thing which is the subject of larceny; that is, in such a manner as shall be sufficient to acquaint the Court and Jury with the nature of the matter or thing alleged to have been forged.

It may perhaps be as well to observe, that if the indictment were at common law, the provisions of the 9 G. 4, c. 15, as to amendments, would have aided any inaccuracy in the setting forth of the forged instrument; as at common law, the offence of forgery only amounted to a misdemeanor.

The *Scotch Game Act*, chapter 68, is very similar in its provisions to the *English Game Act*, c. 32 of 1 & 2 W. 4.

The *Anatomy Act*, chapter 75, has been already noticed, p. 37, *ante*.

PRACTICAL POINTS OF GENERAL INTEREST. No. XXXVII.

LODGING-HOUSE KEEPERS.

THE following case decides a new point on the Bankrupt Act, with respect to Lodging-House keepers:—

The plaintiffs sought to recover the value of certain furniture in the possession of Mrs. Roberts at the time of her bankruptcy. Mrs. Roberts was described as a lodging-house keeper, in the commission of bankrupt, under which the plaintiffs claimed; and the principal question in the cause was, whether she had been subject to the bankrupt laws as an hotel keeper. As to which the witness stated that she gained her livelihood by letting lodgings in a house in Pall Mall East, to which there was no public sign or name; that she received families or single men for long or short periods; that, if required to do so, she found and cooked provisions for them, charging more than she paid, or as the witness termed it, "the market penny;" but that the provisions so found, did not form any general stock of her own, but were kept separately for the individuals for whom they were respectively procured; that she took her orders every Monday morning, and was usually paid once a week, although some of her guests staid only a single night. She had no licence; her name was not on the

door; and "lodgings to let" usually appeared on the window. The lease of the house and the furniture had been originally assigned by Mrs. Roberts to the defendant, for money advanced by him; and then the house had been let ready-furnished by the defendant to Mrs. Roberts; upon which it was contended that there could be no apparent or reputed ownership of a furnished house, within the meaning of the 72d section of 6 G. 4, c. 16, and *Storer v. Hunter*, 3 B. & C. 368; *Walker v. Burnell*, Dougl. 303; *Jarman v. Woolloston*, 3 T. R. 618; *Horn v. Baker*, 9 East. 215; and *Earl of Shaftesbury v. Russell*, 1 B. & C. 666, were cited; but *Tindal*, C. J., before whom the cause was tried, over-ruled the objection; and as to the trading, directed the jury to consider whether Mrs. Roberts sought her livelihood by a profit derived from the provisions she furnished to her lodgers, or only furnished the provisions incidentally, looking to the lodgings as her means of livelihood. A verdict having been found for the plaintiffs, and a rule obtained to set it aside, *Tindal*, C. J. said: The question turns on the construction of the late Bankrupt Act, 6 G. 4, c. 16. which, for the first time, has rendered subject to the bankrupt laws, persons following the vocation of "victuallers, keepers of inns, taverns, hotels, or coffee houses." These words were not at all intended to mean the same thing, or so many would scarcely have been employed. Nor is it necessary that we should define them all; but it is manifest that the word *hotel*, is not used in the sense of the old word *hostel*, for that means what is now termed an inn; and as the word *inn* immediately precedes, it could scarcely have been intended to designate the same thing by both. The modern word is introduced from the *French*, and rather implies a house to which people resort for lodging, than for the sort of entertainment which is to be procured only at an inn. The question therefore is, whether Mrs. Roberts was the keeper of a lodging house or hotel within the meaning of this statute. The jury, by finding for the plaintiff upon that direction, have in effect found that Mrs. Roberts sought her livelihood by a profit on the provisions furnished to her guests. It has been contended, that I should have directed them to consider whether the profit to be derived from letting lodgings was the principal object of Mrs. Roberts's business, and the profit from provisions only accessory; or whether the profit from supplying provisions was the principal object of her business; but that distinction is not quite correct, for it would exclude the keepers of many public hotels, which are frequented by persons who require only lodging of the hotel keeper, and obtain their board elsewhere. It seems to me, therefore, that the question was left to the jury in the mode most likely to fulfil the intention of the legislature, which was to extend the protection of the bankrupt laws to those persons who supply keepers of hotels and lodging-houses with furniture and provisions. *Smith v. Scott*, 9 Bing. 14. See also *Patten v. Brown*, 7 Taunt. 409.

REVIEW.

A Treatise on the Stamp Laws relating to Deeds and Assurances. By Thomas Coventry, Esq., Barrister at Law. In Two Volumes. Vol. I., comprising the Law as it now stands. Vol. II., the consolidated Act (when passed). Vol. I. London. J. & W. T. Clarke. 1833.

It appears that the expected revision of the Stamp Laws is not likely to be brought forward very speedily, and that the principal object will be a consolidation of the several acts, and not any material alteration in their provisions. Mr. Coventry, therefore, has deemed it unnecessary to delay the publication of his observations on questions relating to the proper stamps on intricate conveyancing assurances.

The author intended originally to have restricted his observations to such points as appeared doubtful in practice, according to the adjudged cases; but on consideration he extended his views, and has especially embraced those points which materially affect the conveyancing practitioners out of Court.

He well observes, "that while deeds remain as records from generation to generation, and titles are estimated by reference to the credibility of their testimony, it must always be of importance to form correct conclusions on the dependence to be placed upon them in time of need." They are not like bills and receipts, which have only a temporary duration. He therefore urges, that when a revision of the law takes place, "it should be accompanied by a general indemnity against all past omissions and misconstructions. Indeed, considering (he says) the immense amount of revenue drawn from the country by government for so many years under this head of stamps, it is not unreasonable to ask in return,—for the quiet of titles,—an act of oblivion for past transgressions, at least as far as regards the penalty of incompetence to written instruments improperly stamped, if not to the pecuniary penalties which, it is confessed, return little profit to the revenue."

Mr. Coventry also suggests that a court, or some other tribunal, should be established for the decision of questions relating to the proper stamps on complicated instruments, rather than leave them, as now, to question, when at a remote period they are tendered in evidence.

The following brief sketch of the history of the Stamp Laws may be useful to place on our pages.

" Stamp Laws were first imposed in this country in the year 1694: from that time to 1804, a period of 110 years, numerous explanatory acts were passed. In 1804, a very general impression of the necessity of consolidation seems to have prevailed; but the 44 G. 3 fell short of that object, if indeed it were its aim, and the quick succession of the 48 and 55 G. 3. allowed little time for taking a sufficiently extensive view of the subject, to render consolidation useful. In 1815 the present general act was passed, which, however, is far from general in its provisions; only one section (30) relating to conveyances. From this period to 1822, many returns were called for by the house, all having in view some amendment or alteration in the law. These appear to have been answered by an assurance of a general measure in contemplation; and in 1825-6, the Commissioners of Inquiry into the revenues of the country produced a large body of pertinent and interesting evidence, which will be found in the 14th volume of the Parliamentary Papers of that session. They conclude their report by observing, that the number of stamp acts at present in force is 101; but a much greater number would require attention in any attempt at consolidation. 'The dispersion and multiplicity of these different enactments,' they add, 'loudly call for separation and consolidation. Many of them are to be found in acts whose titles afford no clue to them, and which relate almost exclusively to subjects of a totally different nature, or comprise a variety of unconnected topics of legislation. This will be sufficiently apparent on referring to the titles and contents of the earlier acts. It would be superfluous to recite those acts, or to adduce further instances or details, with a view to demonstrate the present very unsatisfactory arrangement of the statutable provisions relating to the revenue of stamps. It is such as, in our opinion, to render some measure of consolidation and simplification not only expedient, but highly necessary; and we have no hesitation in recommending the adoption of such a measure to your Lordships' early consideration.'—Parl. Pap. 1825-6, vol. 14, p. 130.

" The only result which these reports have at present yielded is a Treasury minute, dated 12th June, 1827, (17 Par. Pap. 1827, No. 482,) whereby a vote of censure is passed on the then Commissioners of Stamps, and they are all dismissed with small retiring allowances. A new board was immediately formed by 'an Act for consolidating the Board of Stamps for England and Ireland,' 7 & 8 G. 4, c. 55. But Mr. Herries, the then Chancellor of the Exchequer, had it in contemplation to concentrate not only the stamp laws, but also the acts relating to the assessed taxes and the post office. His object was merely the simplification of that which was intricate and obscure, but not the alteration of settled principles, or the introduction of unfamiliar verbiage (H. C. 16 May. 1830). He remained in office, however, only long enough to obtain a committee on the stamp laws."

To this it may be added (from the author's introduction), that the stamp duties are said to have been invented by the Dutch, and soon after adopted by several nations on the continent. They were originally imposed here by William III, as a war tax—the first act expressly declaring that the duties were required "for four years, towards carrying on the war in France."

The gross receipts in 1815, were 6,150,971*l.*;—in 1823, 6,168,821*l.*;—in 1825, 6,637,369*l.*; and in 1828, 7,317,609*l.*—including the stamps on probates as well as deeds.

Mr. Coventry points out the different amounts received on the transfer of property by sale and by death. In 1828 the duty on probates and legacies amounted to 2,043,268*l.*; that on deeds and law proceedings yielded 1,686,315*l.* According to Mr. Humphry's calculation, the value of real property sold in 1825 exceeded 35,000,000*l.*, and the yearly value 1,200,000*l.*

From these preliminary views we proceed to the details of the volume before us.

The plan of the author may be shortly stated as follows: 1. Matters which are common to *all* deeds and assurances. 2. The application of the acts to *particular* deeds and conveyances;—to which a schedule is added, containing the duties imposed from time to time, by which it may be discovered whether any given deed is properly stamped with the *duty of the day*, and consequently what reliance may be placed on it, if tendered in evidence in any court of law or equity. This must manifestly be a very useful table for the conveyancing, as well as the general practitioner, engaged in the trial of questions depending on the validity of title deeds.

The first Chapter, on the "Construction of Stamp Acts," is an able and condensed statement of the authorities on the subject; and being of very general utility, and furnishing a fair specimen of the style and manner of the author, we give it fully:

"It is a maxim well worthy a liberal government, that every charge on the subject shall be imposed by clear and unambiguous language. 'I think,' said Lord Ellenborough, 'that where the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out; and we should give a liberal construction to words of exception, confining the operation of the act.' The old rule, that where the interests of the king and subject clash, the former shall be preferred, is, as to the revenue, entirely exploded in all Courts, except the Exchequer, where a relic of the old

heaven is still occasionally perceptible; but even there, the corrupt system of rewarding the jury with double fees for crown verdicts, is at length properly abolished. Baron Wood has said, that if a party has two ways of doing a thing, it is no fraud in him to adopt that plan which is least beneficial to the revenue.

"Lord Tenterden also has given his sanction to the above liberal construction of the stamp acts. 'Acts of parliament,' he observes, 'imposing duties, are to be so construed as not to make any instruments liable to them, unless manifestly within the intention of the legislature;' and in his place in the House of Lords the same noble and learned Lord further remarks, 'I have always thought, that where we have to put a construction upon an act of parliament, which does not relate to some particular art or science, we should understand the words in the act in the same way as they are understood in the common language of mankind. So in another case, on a question of stamps, his Lordship said, that the legislature must be taken to have used the words of the act in their ordinary sense and acceptation; and in speaking for himself, he could not forbear remarking, that he always thought there was danger in giving effect to what is called the equity of a statute, and that it is much better and safer to rely and abide by the plain words, though the legislature might possibly have provided for other cases, had their attention been directed to them.'

"The course, however," says Mr. Coventry, "adopted at the Stamp Office does not always accord with these liberal principles; for if any doubt arises there as to the proper stamp on a complicated deed of assurance, the Commissioners invariably insist on the highest duty the case will admit; against which, the subject has no other remedy than taking the risk of a lower stamp on himself,—if he pays the higher duty, he could not, I should think, recover a portion back on the ground of money paid under a mistake; and even if a court of law would enter into a question of that sort in an action on the case, the extra costs would far exceed any probable benefit. The subject is therefore, in some measure, at the mercy of the Commissioners, notwithstanding the above liberal interpretation adopted by the Judges.

"Some have said that a statute is like a tyrant, where it comes it makes all void; but that the common law is like a nursing father,—making only that part void where the fault lies. This may be applicable to bills of exchange, promissory notes, receipts, apprenticeship deeds, and policies of assurance; but to deeds in general the stamp laws extend the mild and wholesome correction of a prudent parent, though founded almost exclusively on statutes. The general rule, as lately acknowledged by Tindal, C. J., is, that the stamp act, as a revenue law, is to be construed strictly with reference to the rights of the subject.

"It may not be improper to add, in treating of general principles of construction, that a stamp can be used for one purpose only. An

affidavit, therefore, read in one cause, with which it is headed, cannot be received in another cause between the same parties for a different subject-matter. So a deed stamp, having been used for one effectual purpose, cannot be afterwards used for another transaction, though of a precisely similar nature. And it matters not for how long or short a period the operation of the instrument continue, if it has been once executed by all necessary parties,—that is, I presume, by all conveying parties,—it cannot be treated as ineffectual, and the deed having operation for a moment, the stamp is used, and cannot afterwards be considered as a spoiled stamp, within the meaning of the affidavit claiming an allowance.

"It is merely necessary to subjoin, that the construction of the stamp acts is the same in Courts of Equity as in Courts of Law."

Chapter 2. treats of stamps, considered in regard to evidence.—The 3d, of penalties and punishments for evading and forging stamps.—The 4th, of stamping deeds after execution.—The 5th, of setting out the true consideration.—The 6th, of several matters in one deed.—The 7th, of schedules, indorsements, and matters referred to.—The 8th, of alterations, corrections, and interlineations.—The 9th, of other incidental matters; Cumulative stamps, advice from the stamp office, denomination of stamps, property of stamps, responsibility of attorney for wrong stamps, *ad valorem* deed, and progressive duties.—The 10th, of the means of obtaining stamps.—The 11th, of spoiled stamps, and the allowance.

So far proceeds the First Part of the Book. The Second Part, which treats of matters relating to deeds and instruments *individually*, is formed on an alphabetical arrangement, and begins with "Abstract," though that document, of course, requires no stamp. Such is the case also of "Acknowledgments," some of which, as of debts *unpaid* or money deposited, are free from duty. All kinds of instruments and legal documents or writings, which are—or are *not*—liable to the stamp duty, are successively described and considered. The alphabetical plan is one of great convenience in practice, on occasions requiring frequent reference; and has been therefore judiciously adopted in the present instance.

The stamp acts are not set out collectively, but quoted *verbatim*, so far as applicable, at the commencement of each subject. The duty on advertisements, is properly omitted, as being without the scale of Mr. Coventry's work. He then proceeds to Affidavits and Agreements, the latter of which, and their various kinds, are briefly, but very sufficient-

ly described. The subjects of Bonds, Conveyances, and Copyholds, are copiously considered, and more particularly those of Leases, Legacies, Mortgages, Probates, and Administrations,—the importance of which justify the ample disquisitions bestowed upon them.

The Appendix is in many respects valuable. We have already noticed the chronological list of duties, which will readily assist in ascertaining the accuracy of the stamps at any given period. According to other tables, it appears that in a specified time, 32 millions of property have been devised away, and $2\frac{1}{2}$ millions left to descend according to law. And Mr. Coventry observes, that

“Thirty-two or three years are usually termed a generation, during which time real property will have changed hands at least three times, which will give a return about equal to the duty on personalty accruing by death. But there remains a still larger item to throw into the credit side of the personalty account. During the period of these calculations, one million sterling was paid for duty on legacies alone; but, though the duty was paid in that year, the legacies had fallen due a considerable time before. The inequality of taxation is often inveighed against, and the subject of these remarks is frequently adduced as evidence of the fact. The fundholder endeavours thus to show, that personal property bears at present an unequal proportion of the burdens of the country, and that therefore its transfer should not be further incumbered. The writer feels great difficulty in arriving at any satisfactory conclusion on that question from these data; he therefore leaves them in the hands of the reader, as objects of interesting curiosity, rather than of use.”

We have thus gone through the present volume, so far as was consistent with our limits. We now conclude with expressing our opinion, that the work not only exhibits great judgment in the selection of the materials, and skill in their arrangement, but must be extensively useful for its practical value to the profession. It is altogether a very superior performance.

THE PROPERTY LAWYER.

No. IX.

THE DOCTRINE OF ESTOPPEL.

THE doctrine of estoppel is frequently of great practical importance. Contingent and equitable interests may be bound and conveyed at law by

its operation. A fine *sur concessit* may be levied, by means of which the lands are demised to the conusee for a long term of years, so that when the contingency happens, the estate which passed by estoppel becomes an estate in interest, and has the same effect as if the contingency had happened before the fine was levied. *Weale v. Lower*, Pollex. 54. But although a fine has generally been employed to effect this object, it seems clear that a contingent remainder, or executory or equitable interest, may be bound and conveyed by an indenture, although not by a deed poll. Co. Litt. 352, a. *Rawlyn's case*, 4 Co. 51, b. *Hermitage v. Tomkins*, 1 Ld. Raym. 729. *Bensley v. Burdon*, 2 Sim. & Stu. 519. The whole law on the point has lately been considered, and laid down very elaborately by the late Lord Chief Justice of the King's Bench, in a motion to enter a nonsuit in an action of ejectment, tried before *Tindal*, C. J.

The facts proved were, that Thomas Jarvis the elder, having contracted to purchase the premises, was let into possession by order of the Court of Chancery on the 29th Dec. 1808; and being let into possession, but never having had any conveyance executed to him, he afterwards, on the 2d Oct. 1820, devised them to his son and heir, Thomas Jarvis the younger. Upon his father's death the son entered, and on the 31st January, 1823, he mortgaged the premises by indentures of lease and release, to the lessors of the plaintiff. The lease and release were in the common form, excepting that in the latter there was a recital, that the said Thomas Jarvis is legally or *equitably* entitled to the several messuages or dwelling-houses conveyed; and in the covenants for title, the releasor covenanted that he is, and standeth lawfully or *equitably*, rightfully, absolutely, and solely seised in his demesne as of fee, of and in and otherwise well entitled to the said several messuages or dwelling houses, &c. On the 1st and 2d of April, 1824, indentures of lease and release, under the contract of sale in 1808, were executed to Thomas Jarvis the younger, whereby he became seised of the legal estate in the premises, which he afterwards conveyed by mortgage, for a valuable consideration, to the defendant, Henry Bucknall. There was no proof that Bucknall had any notice of the prior mortgage; and upon his mortgage all the title deeds were delivered to him. In this action, he had come in under the common rule, and defended as landlord. The other defendants were tenants in possession.

The question on which the Court took time to consider was, whether the defendant claiming under the mortgagee, Thomas Jarvis the younger, could set up as a defence against the lessees of the plaintiff, the legal estate acquired by him since their mortgage. And it

was argued for them, that he, as representing the mortgagee Thomas Jarvis, was estopped from doing so; and for this purpose, Co. Litt. 352, a. Litt. sect. 693, and the cases of *Bensley v. Burdon*, 2 Sim. & Stu. 519; *Helps v. Hereford*, 2 B. & A. 242; *Goodtitle v. Morse*, 3 T. R. 365; *Goodtitle v. Bailey*, Cowp. 597; *Goodtitle v. Morgan and others*, 1 T. R. 755; *Doe d. Christmas v. Oliver*, 10 B. & C. 181; *Trevivan v. Lawrence*, 1 Salk 276; and *Taylor v. Needham*, 2 Taunt. 278, were cited. "Of these cases," said Lord Tenterden, "none are applicable to the point in question, except *Goodtitle v. Morgan*, and *Bensley v. Burdon*, (of which, more presently,) and *Helps v. Hereford*, and *Doe v. Oliver*. The last two are cases of estoppels, arising out of fines levied before any interest vested; there is no doubt that a fine may operate by way of estoppel, but the present is not the case of a fine. In sect. 693, Littleton, speaking with reference to the doctrine of remitter, says, 'this is a remitter to him if such taking of the estate be not by deed indented, or by matter of record which shall conclude or estop him;' and in Lord Coke's commentary on this passage, a deed indented is distinguished from a deed poll in this particular of remitter, for the deed poll is only the deed of the feoffor, donor, and lessor, but the deed indented is the deed of both parties, and therefore the taker as well as the giver is concluded. In 352 (a,) Lord Coke divides estoppels into three sections, the second of which he thus defines; 'by matter in writing, as by deed indented, by making of an acquittance by deed poll, by defeasance by deed indented or deed poll.' And there are many other authorities to show that estoppel may be by any indenture or deed poll. But upon this rule there are many qualifications and exceptions engrafted. It is a rule that an estoppel should be certain to every intent, and therefore, if the thing be not precisely and directly alleged, or be mere matter of supposal, it shall not be estopped; nor shall a man be estopped where the truth appears by the same instrument, or that the grantor hath nothing to grant, or only a possibility, Co. Litt. 352 (b,) where this case is put; 'an impropriation is made after the death of an incumbent, to a bishop and his successors. The bishop by indenture, demiseth the parsonage for forty years, to begin after the death of the incumbent. The dean and chapter confirmeth it. The incumbent dieth. This demise shall not conclude, for that it appeareth that he hath had nothing in the impropriation till after the death of the incumbent.' This passage from Co. Litt. is adopted by Ch. B. Comyns, in his Digest, Estoppel, (E. 2.) Now, in the case at bar the very truth, that the mortgagor, Thomas Jarvis the younger, had only an equitable interest, is partly admitted; for the recital states in the alternative, that he is lawfully or equitably entitled, and the covenant for title is to the same effect. At all events there is in this recital a want of that certainty of allegation, which is necessary to make it an estoppel. Lord Holt lays it down, in *Salter v. Kidley*, 1 Show. 59, that a general recital

is not an estoppel, though a recital of a particular fact is. And upon this the judgment of the Lord Chancellor in the recent case of *Bensley v. Burdon*, which was relied upon by the counsel for the lessors of the plaintiff, proceeded. The deed of release in that case recited, that Francis Tweddle the younger was, subject to his father's life estate, seised or possessed of, or well entitled to, the lands and tenements thereafter mentioned, in reversion or remainder; and by the deed he granted and released this remainder, and covenanted that he was seised of it for an indefeasible estate of inheritance. The present Master of the Rolls, then Vice Chancellor, by whom this case was first decided, according to the report in 2 Sim. & Stu. 519, held that this was an estoppel, upon the general ground that it was a deed indented, and that the nature of the conveyance, namely lease and release, made no difference. The Lord Chancellor confirmed this judgment, but put it on this solely, that it was an allegation of a particular fact, by which the party making it was concluded. That case, therefore, greatly differed from the present, in which there is no certain precise averment in the deed of release, of any seisin in T. Jarvis the younger, but a recital only that he was legally or equitably entitled. We think, therefore, that this recital does not operate by way of estoppel. We are of opinion also, that the release whereby T. Jarvis granted, bargained, sold, aliened, remised, released, &c. the premises, does not by mere force of these words amount to an estoppel. Littleton lays it down (sect. 446), that 'no right passeth by a release, but the right which the releasor hath at the time of the release made. For if there be father and son, and the father be disseised, and the son (living his father) releaseth by his deed to the disseisor, all the right which he hath or may have in the same tenement, without clause of warranty, &c. and after the father dieth, &c. the son may lawfully enter upon the possession of the disseisor.' To the same effect is *Wivel's case*, Hob. 45, and Perk, s. 65, that where a son and heir joins in a grant, in the lifetime of his father, while he has neither possession nor right in the matter granted, the grant is utterly void, and nothing passed. So here, if the release pass nothing but what the releasor lawfully had, and he had no legal title in the premises at the time of the release made, those who claim under him by a subsequent good title are at liberty to shew this; and there is no implied estoppel, as appears from the authorities just cited, and the Year Books 49 Ed. 3. 14, 15; 45 Ass. 5; 46 Ass. 6; and Brook's construction of these books, in his Abr. tit. Estoppel, pl. 146; 10 Vin. Abr. Estoppel (M).

"The case was put in argument on another ground for the lessors of the plaintiff, namely, that it was within the common rule that a mortgagor cannot dispute the title of his mortgagee. Such a rule, without reference to the technical doctrine of estoppel, undoubtedly is to be met with, as laid down by Lord Holt in *Salkeld*, and has been often recognized in modern times; but we are of opinion that it

does not apply to the present case. Here, the defendant Bucknell claims as a purchaser, for a valuable consideration, without notice, a legal interest which was not in T. Jarvis at the time of his mortgage to the lessors to the plaintiff, and T. Jarvis had then an equitable interest which passed to them, and which is not questioned nor sought to be disturbed by the defence which Bucknell sets up. This case much resembles that of *Goodtitle v. Morgan*, where a second mortgagee, without notice, who got in the legal title by taking an assignment from a trustee, and the mortgagor of an outstanding term assigned to attend the inheritance, was holden entitled to a legal preference against the first mortgagee. There, as here, it might be said that he was bound by the same conclusion as the mortgagor, and should not question the right of the prior mortgagee. But the legal title prevailed there, and so, we think, it ought here."

Some recent cases on this subject were not cited in the judgment. In *Hallett v. Middleton*, 1 Russ. 255, Lord Gifford, M. R., held, that a party to a conveyance, containing a recital of a particular fact, was estopped from all right to compensation from another party, on whose statement he had relied, in consequence of its turning out that the recital was untrue. But this rule will not obtain where the recital is in a bond. *Edwards v. Brown and others*, 3 Yo. & Jer. 423.

ON THE DISSERTATION ON CONVEYANCING, No. VIII.

P. 104.

YOUR contributor C. S., has not correctly stated the point which was decided in *Murray v. The East India Company*. And as the principle which he draws from that case, and the one cited from 10 Ves. 93, viz. "That the Statute of Limitations is not spent, if there be not, for the whole period of six years, a person capable of being sued," is one of the utmost importance, if correct, I think much care should be used to ascertain its correctness, the more especially as it wears the face of novelty. I have always understood the principle to be this:—That when once there is a compleat cause of action, viz. a person capable of suing, and another capable of being sued, that the statute attached to that cause of action, and commenced running; and having once commenced, it is not stopped by any future disability. This principle has been adopted in the construction of the Statute of Fines (*Doe v. Jones*, 4 T. R. 300); and Lord Tenterden has said, that the several statutes of limitation, being all in *pari materia*, should receive the same construction. 5 B. & Ald. 215.

The case of *Murray v. The East India Company*, gives no authority to the principle laid down by C. S., nor does it any way impeach the one which I have submitted; though, as

the case is stated by your correspondent, it has both these effects. The facts of that case were shortly these:—The action was brought by an administrator, upon bills of exchange accepted by the defendants, *after the death* of the intestate, and before any administration was granted. The question to be decided was, did the limitation *begin* to run from the acceptance, or day of payment; or from the date of the administration? The Court decided that the limitation did not begin to run till the grant of administration, as till then there was no person capable of suing on the bills. Now there is nothing here which countenances the idea "that the statute *ceases* to run against an administrator until administration granted;" because prior to the administration, the statute had not begun to run; and therefore could not have ceased to do so.

It is highly important that a just conclusion should be arrived at on this point; which is the only excuse I have to offer for interfering, and requesting your able contributor's reconsideration of the subject. C. C.

DISPUTED DECISIONS.

COPYHOLDS

IN the case of *Wellman v. Bowring*, the husband and wife, before their intermarriage, surrendered certain copyholds to which they were respectively entitled, to trustees, upon various trusts (which have determined), with ultimate limitations respectively to the use of his and her executors or administrators. The trustees were never admitted, and the legal estate therefore vested in the heir. The widow claimed the copyholds as her husband's administratrix, and filed her bill praying that the heir might be declared a trustee of the legal estate for her. Lord Eldon confirmed the decree of the *Vice Chancellor*, holding that the ultimate limitations were within the consideration of the marriage settlement; as the husband might survive or the wife might survive, and he saw no reason why a limitation which gives an interest eventually to the husband and eventually to the wife, was not fairly to be so considered. He, therefore, held the wife entitled as against the heir. But he, at the same time, threw out a very decided opinion, that the wife was only entitled as trustee for the husband's next of kin, in analogy to the rule in *Ripley v. Waterworth*, though he, unfortunately, did not consider it necessary to decide this point. 2 Russ. 880. Now the *Vice Chancellor* has since decided, that she was a trustee for the husband's next of kin. 3 Sim. 328. An important question seems to have been thus settled by a side wind, which had long been a matter of great doubt; that is, that the next of kin are within the consideration of a marriage settlement. Sir E. Sugden, in his *Treatise on Vendors and Purchasers*,

p. 651, 656, and p. 668, 8th edit., seems to lay down the contrary as the better opinion; and it may well deserve consideration. With all deference it is submitted, whether a surrender which is not to be supplied in favour of a grandchild, 6 Ves. 544, is to be supplied in favour of the next of kin by mere implication? The case of *Cornick v. Trepaud*, 6 Dow Parl. Ca. 60, is altogether overlooked. J. T.

PRACTICE.—NEW RULES.

IN the case of *Simpson's bail*, as to affidavit of justification, reported p. 64, the decision appears contrary to the rule on that subject, which expressly states, that each of the bail shall swear that he is "possessed" of property, &c.; whereas in the above case it is stated that it is not sufficient for bail to swear that they are "possessed," &c. but must swear they are "worth," &c.

Again, in the case of *Ward's bail*, *ibid.* p. 63, it is stated, that notice of bail describing the bail to have resided "within" the last six months at a particular place, is bad; but must describe them to have resided "for" the last six months; whereas the rule is, that every notice of bail shall mention the street or place, &c. where each of the bail resides, and all the streets or places, &c. in which each of the bail has been resident at any time "within" the last six months. STUDIOSUS.

PLEASANTRIES OF THE LAW REPORTS.

No. III.

I SHALL now, with the reader's permission, continue my selection from the law books.

In an appeal of death, the defendant waged battel, and was slain in the field; yet judgment was given that he should be hanged, which the Judges said was altogether necessary, for otherwise the lord could not have a writ of escheat. Co. Litt. 390, n.

An English monk goes into France, and there becomes a monk; yet is he capable of any grant in England, because such profession is not triable, and also because all profession is taken away by statute, and by our religion holden as void. *Ley's case*, 2 Roll. 43.

It is a rule of law, that *idem non potest esse agens et patiens*; and therefore a man cannot present himself to a benefice, nor sue himself. Litt. 147, b. So no man can summon himself; and therefore if a

Sheriff suffer a common recovery, it is error, because he cannot summon himself. Dyer, 188, a; Owen, 51. A man cannot be both judge and party in a suit; and therefore if a Judge of the Common Pleas be made Judge of the King's Bench, though it be but *hac vice*, it determines his patent for the Common Pleas; for if he should be Judge of both Benches together, he should controul his own judgment; for if the Common Pleas err, it shall be reformed in the King's Bench. (See Cro. Car. 600.) Littleton, Chief Justice of the Common Pleas, made Lord Keeper, yet continued Chief Justice. So Sir Orlando Bridgeman was both Lord Keeper and Lord Chief Justice of the Common Pleas at the same time, for these places are not inconsistent. 1 Siderf. 338. 365.

If one that is seised in fee of an orchard, makes a feoffment of it to J. S., and goes into the orchard and cuts a turf or a twig, and delivers it in the name of seisin to the feoffee over a wall of the same orchard, the feoffee then being on other land not mentioned in the feoffment, this is a void livery. 2 Roll. 6. pl. 5. As to when a man shall give and take by his own livery, see Perkins, s. 205.

The following is the charter given by William the Conqueror to Norman Hunter:

I William the third year of my reign
Give to thee Norman Hunter
To me that are both leef and dear
The Hop and the Hopton
And all the bounds up and down
Under the Earth to Hell
Above the Earth to Heaven
From me and mine
To thee and thine
As good and as fair
As ever they were
To witness that this is sooth
I bite the white wax with my tooth
Before Jug Maud and Margerie
And my youngest son Henry
For a bow and a broad arrow
When I come to hunt upon Yarrow.
See Speed, 424, b.; 2 Roll. Abr. 181;
Merton's Anglorum Gesta, in Vita IV. 1.

A. the attorney of B., brought an action against C. for saying to B., "Your attorney is a bribing knave, and hath taken twenty pound of you to cozen me." Judge Warburton held the words not actionable, for an attorney cannot take a bribe of his own client; but Hobart said he might when the reward exceed measure, and the end.

against justice, as to raze a record, &c. And Hob. says, after he had spoken Justice Warburton began to stagger in his opinion, so the plaintiff had judgment. Hob. 8, 9; and 1 Roll. 53.

An infant brought an action of trespass by her guardian; the defendant pleads that the plaintiff was above sixteen years old, and agreed for sixpence in hand paid, that the defendant have license to take two ounces of her hair; to which the plaintiff demurred; and adjudged for her, for an infant cannot license, though she may agree with the barber to be trimmed. *Scroggan v. Stewardson*, 3 Keb. 369.

A woman shook a sword in a cutler's shop against the plaintiff, being on the other side of the street; and in trespass for assault and battery, there was a verdict of the assault, and not guilty of the battery. It was prayed to give no more costs than damages, and so granted; which was a noble. *Smith v. Newman*, 3 Keb. 283.

Let the following case be a warning to all bad cooks. Trin. 8 Hen. 4. Rot. 47. *Willielmus Milburn recuperat per juratam per billam suam, in quod queritur versus Johannem Cutting Cook de eo quod ipse Johannes apud Westmonasterium vendebat dicto Willielmo unum caponem pistum corruptibilem et recale factum, qui capo assatus per quatuor dies in Hospicium Domini Regis et iterum calefactus et pistus extitit de quo postquam edit vomitum horribilem fecit, ita quod infirmabatur per duas septimanas, recuperat inquam viginti solidos per damnis.* And Rolle says he was informed that it appears upon the record at large that the Judges increased the damages. 1 Roll. 89.

A guest comes into a common inn, and the host appoints him his chamber, and in the night the host breaks into his guest's chamber to rob him: this is burglary. Dalton, cap. 151, in nota.

The Danes first brought into this realm excessive drinking; and King Edgar permitting many of them to dwell here, was at length constrained to make a law against this excess, which never comes alone. Driving certain nails into the sides of their cups as limits and bounds, which no man upon great pain should be so hardy as to transgress. 3 Inst. 200. The Ancient Britons were free from this crime. "A drunkard," says my lord Coke in his First

Institute, 267, a. "is voluntarius demon, and what hurt or ill soever he does, his drunkenness aggravates it."

With which very excellent maxim I shall for the present conclude.

† * †

PERSONS APPLYING FOR RE-ADMISSION IN THE KING'S BENCH,

In Hilary Term, 1833.

Best, George, Northampton.
Green, William, 30, King Street, St. John Street, Clerkenwell.
Scott, Barkas, South Shields.
Senior, Lewis Goodin, late of Bruton, now of Compton Pauncefoot, Cornwall.
Thompson, Edward, Reigate, Surrey.
Willmott, Robert, Eldridge, Fulham.

SUPERIOR COURTS.

King's Bench Practice Court.

NOTICE OF BAIL.—DESCRIPTION.

A notice of bail describing clerks in a jeweller's shop as "jewellers," is bad.

Theiger opposed bail, on the ground that the notice of bail was bad. It described the bail as "jewellers," whereas it now appeared, from the statement made by the bail themselves on their examination, that they were only clerks in the shop of the defendant, who was a jeweller, and did no part of the business of jewellers.

Littledale, J. said, the description was insufficient; but as it did not appear that the plaintiff had been deceived by the notice, time should be allowed to give a fresh notice.

Time granted to give a fresh notice.—*Hamlet's bail*, Nov. 10th, 1832. K. B. P. C.

DISTRINGAS.

The application for a distringas cannot be till after eight days from service of summons.

Ashmore moved for a *distringas*, on affidavit. *Littledale, J.*—You cannot have a *distringas* now. The defendant has eight days to appear to the summons; and your affidavit does not show that eight days have elapsed since the service. You can move again.—*Smith v. James*, Nov. 20th, 1832. K. B. P. C.

DISTRINGAS.

A copy of summons ought to be left at defendant's residence, and notice of the application mentioned.

On motion for a *distringas*, it was sworn that three attempts had been made to serve the summons, but it did not appear that a copy had been left.

Patteson, J.—You must leave a copy. That is now always required; and, in general, you must apprise the person whom you see, of the nature of your business: and therefore no rule. —*Coett v. Willis*, Nov. 20th, 1832. K. B. P. C.

FORMA PAUPERIS.

A defendant in a criminal case may defend in forma pauperis.

F. V. Lee moved that a prisoner, against whom a true bill had been found for felony, might be allowed to defend *in forma pauperis*.

Littledale, J.—Was the indictment found by the Middlesex Grand Jury?

Lee.—No, my Lord; it was found at the Clerkenwell Sessions, and the indictment has been removed here by *certiorari*. The defendant swears he has not 5*l.* in the world.

Rule granted.—*Rea v. Sims*, Nov. 20th, 1832. K. B. P. C.

ATTORNEY AND CLIENT.—LIEN.

The relation of attorney and client must in some way exist, or the Court will not interfere to compel the attorney to deliver up papers.

Campbell moved for a rule calling upon an attorney to shew cause why he should not deliver up certain deeds and papers in his possession, under peculiar circumstances. He admitted that the relation of attorney and client did not exist; but here there was fraud. The applicant had agreed to purchase certain land for 450*l.* He had a meeting with the vendor's attorney, in order to pay the money and have the deeds. The attorney claimed from the purchaser a fee of two guineas, which, he said, was for his signing the deed as trustee. The purchaser refused to pay, and the purchase was not completed. The vendor then appointed another, at which he said every thing was to be made comfortable. The vendor and his attorney, and the purchaser, met accordingly: the deeds were produced: the purchaser counted out his money, but just as he had done so, he perceived that the deeds were gone: the attorney still claimed the two guineas, and refused to deliver them without. Under these circumstances he hoped the Court would interfere: here was a trick on the part of the attorney.

Littledale, J.—No, I cannot interfere: this would be going further than we have ever done

yet. The relation of attorney and client did not exist.

Rule refused.—*Ex parte Johns*, Nov. 20th, 1832. K. B. P. C.

Exchequer.

NOTICE OF BAIL.—PRISONER.

In a notice of bail for a prisoner to justify, at the time of putting in it must appear that the defendant is a prisoner.

J. Jervis opposed bail, on the ground of irregularity. The notice was to put in and justify at the same time. The defendant is a prisoner, but the notice does not state that he is so. It is the uniform practice of this Court for it so to appear. The reason is, that the rule for allowance is always drawn up, as well for the allowance as for the discharge of the prisoner, which it would not be unless it appeared that the defendant was a prisoner.

Platt, contra, insisted that the rule for allowance operated as a discharge, and was a perfect justification for the officer.

Gurney, B. (after consulting with the Master) held the objection to be good; and that the common form of the rule for allowance was in the way suggested by Mr. *Jervis*.

Bail rejected.—*Chrington's bail*, Nov. 17th, 1832. Exch.

DISTRINGAS.

Where the service of the summons is not personal, the eight days to appear in commence from the last day of calling; and an appointment ought to be made to see the defendant.

Motion for a *distringas*, on an affidavit of several ineffectual attempts to serve the defendant.

Bayley, B.—You don't say you'll call again. You ought in general to make an appointment to see the defendant. The eight days run from the last day of calling.—*Atkins v. Lowther*, Nov. 24th, 1832. Exch.

WITNESS.—ATTACHMENT.—SUBPENA.

An attachment will not be granted against a witness for not obeying a subpoena, unless the original subpoena has been shown; or if the witness has a reasonable ground for believing that he will not be wanted.

V. Williams showed cause against a rule obtained by *Knowles*, why an attachment should not issue against a witness of the name of *Sloman*, for not obeying a subpoena. The action in which *Sloman* was subpoenaed was an action of trover against the sheriff, for the value of goods seized and sold by him, under a *fieri facias* issued against the goods of *Lloyd*.

in an action of *Wandsworth v. Lloyd*. Sloman was the sheriff's officer; but the levy was in fact made by him and a person whom he employed, of the name of Lockett. All, therefore, that Sloman could prove, was equally known by Lockett. Lockett and Sloman were both in attendance for several days at Westminster Hall, when the trial was expected to come on. It is sworn that a conversation took place between Sloman and Mr. Bell, the plaintiff's attorney, at Westminster, in which Sloman told Bell that Lockett levied the execution, and that therefore he (Sloman) would not be wanted, and should go: that the attorney said very well; and that the proceeds of the levy were admitted by the attorney to amount to 68*l.* and upwards. But there is a formal objection also: they are not in a condition to ask for an attendance, for we swear that the original *subpœna* was not shown.

Knowles, in support of the rule.—The purpose for which we wanted Sloman, was not to prove the levy or the amount. Sloman was, in fact, the defendant. He had been examined before the commissioner of bankrupts, and was asked, "Had you any notice that a docket would be struck?" And he answered, "I had before the sale."

Bayley, B.—Sloman is not aware of the purpose for which you want him: he thinks you only want him to prove the amount of the proceeds.

Knowles.—He must have been aware for what we wanted him. The action was for selling goods under a *fi. fa.* Notice had been given that a docket would be struck against Lloyd; but Sloman said he would sell notwithstanding.

Bayley, B.—That is not notice of the bankruptcy.

Vaughan, B.—Have you shown the original *subpœna*?

Knowles.—The original need not be shown unless asked for.

Bayley, B.—When you move for an attachment, you must show the original.

Knowles.—Yes: the original *rule*, but not the *subpœna*, unless asked for. Sloman absented himself, and thereby committed a contempt: he sent Lockett down, who did not know the fact we wanted to prove, and the action failed in consequence of his absence.

Bayley, B.—The Master tells us it is necessary to show the original *subpœna*. There are cases where the original need not be shown; but it is different where a party is to be brought into contempt^a. By Sloman and Lockett a conversation is deposed to, and Bell is dis-

tinctly apprised that Lockett seized: Bell says very well.

Rule discharged.—*Rex v. Sloman*, Nov. 22d, 1832. Excheq. full Court.

NOTES OF THE WEEK.

"DROPPED BILLS" OF THE LAST PARLIAMENT, EXPECTED TO BE RESUMED.

THE approach of the new Parliament induces us to notice the Bills relating to the Law, or affecting the Members of the Profession, which were introduced in the course of the last Session, but did not reach their destination. These bear the name of *Dropped Bills*, being those which are not withdrawn by their proposers, or thrown out on a division, but have failed by the termination of the Session. Those which we select are expected to be resumed; and it may therefore be useful to state the subjects of them, in order to prepare the several classes of our readers, who are interested in the matters to which the Bills relate.

The most important are the Real Property Bills, consisting of,

1. The Abolition of Fines and Recoveries;
2. The Alteration of the Law of Inheritance;
3. Dower;
4. Curtesy; and
5. The Limitation of Real Actions.

To which is to be added,

6. The General Registry.
- The next in professional consequence, is
7. The Bill for the Improvement of the Court of Chancery.
 8. Next we may rank the Compulsory Arbitration Bill.
 9. The Alteration of the Usury Laws.
 10. The Registration of Births.
 11. The Law as to Insolvent Members of Parliament.

The less material measures, yet worthy of notice in their degrees, are

12. The Statute of Frauds Amendment.
13. The Attestation of Instruments.

^a [The same point was determined in the Bail Court, King's Bench, next day.

A rule *nisi* had been obtained by *White*, in full Court, for an attachment against a witness for not obeying a *subpœna* issued by the Crown Office to attend the Middlesex Sessions. Several *subpœnas* had been issued from the Sessions without effect; and then a *subpœna* was

obtained out of the King's Bench, and *ls.* given at the time of service.

Hutchinson showed cause, and objected that the original *subpœna* was not shown; and the rule was thereupon discharged. Whether the rule would have been maintained on the merits was not discussed: the point is disputed.—*Coram Littledale*, Nov. 23d, 1832. K. B. P. C.]

14. The Examination of Witnesses in Equity in Ireland.

15. The Regulation of Sheriffs' Expenses.

16. The Law of Sewers.

These are legislative propositions, which have already attained the maturity of elaborate Bills—most of which have passed through several stages; many of them survived the ordeal of one House of Parliament, and some were suspended only on the eve of a third reading.

In our number for the 25th August, we gave a list of the Parliamentary Notices relating to the Law for the next session. The above catalogue of Dropped Bills, and the list of Notices (Vol. IV, p. 262), will put our readers in possession of the whole state of legal reform, as at present contemplated. In the list of notices, the most prominent are, the Courts of Chancery and Bankruptcy, and the Punishment of Death.

We shall gird ourselves to sustain the combat of supporting or opposing such of these or other measures touching the Laws, as, on mature consideration, we may deem essential to the interests of justice; and we invite, in addition to our accustomed and regular troops, a numerous and well-tryed volunteer corps, to aid our exertions in the common cause. Both divisions of our force will allow us, however, to temper their valour with discretion, and entrust themselves to the leadership of those who have peculiar means of intelligence of the operations of the enemies of existing institutions—the legislative tinkers, who do much more harm than good, and “the architects”—not of improvement,—but (as Mr. Burke said) “of ruin.”

ADJOURNMENT OF THE COURT OF REVIEW.

The business of this Court appears to have been finished. The Sittings were adjourned from the 15th instant to the 11th of January.

ANSWERS TO QUERIES.

Common Law.

PROCESS ACT.—PROCEEDINGS BY ORIGINAL. P. 132.

In answer to the query of “A Subscriber,” I beg to inform him that I consulted a barrister at the common law bar, relative to the proceedings by original, and his opinion was most

decidedly that the Uniformity of Process Act did away with originals in all *personal* actions.

G. P. P.

Law of Property and Conveyancing.

BEQUEST.—INTEREST ON LEGACY, P. 131.

“*Lawful* Interest” means 5l. per cent.

O'H.

MORTGAGE.—EQUITY OF REDEMPTION. P. 66.

In strictness the deed is not a *mortgage*, but merely a conveyance for payment of a debt, for want of the insertion of a *proviso for redemption*; it has most unquestionably such an equity, that on his tendering the money to B., the Court of Chancery would compel him to execute a *reconveyance*. In the absence of such arrangement, B. could give a good title to a purchaser, who cannot require him to enter into *covenants for title*, but only the one against his own incumbrances.

E. M.

DEVISE.—ENTAIL.—RECOVERY. P. 131.

The recovery suffered by the tenants in tail was a valid one, and no necessity existed for the concurrence of the trustees. I should apprehend that a copy of the recovery could be obtained on application to the officer who recording the Welsh recovery, as it remains with him until transmitted to the Superior Court, as provided by the “Act for the more effectual administration of justice in England and Wales,” commonly called Sir James Scarlett's Act, section 27.

T. T. P.

Law of Attorneys.

ARTICLED CLERKS.

I am sorry to inform your correspondent “Student,” that he must be articted *de novo*, as the service must commence from the date of the articles, and continue for the *entire period* therein specified. 22 G. 2, c. 46, § 8; 2 G. 2, c. 23, § 5. Your correspondent has no means (if I may use such an expression) of setting the bones of his disjointed time; but his only plan is to be articted afresh, and the articles must bear a new stamp. He may, however, by a proper application to the Commissioners, get one allowed him for that on his articles of the 10th Nov. 1830, which has become spoiled; at least, I knew a case wherein they did so, not possessing half so good a claim on the score of justice as the case of “Student” appears to have.

O'H.

Practice.

HOLDING TO BAIL.—INTEREST.

It is *not* necessary, in an affidavit to hold to bail on a promissory note payable on demand with interest, to state specifically how much is due for principal, and how much for interest. The words in the affidavit may be, "that *C. D.* is indebted to the deponent in 20*l.* and upwards for principal and interest on a certain promissory note," &c. O'H.

QUERIES.

Law of Attorneys.

CERTIFICATE.—RE-ADMISSION.

A. was articled to *B.* in 1825, and was admitted in 1830. He now wishes to commence practice. Can *A.* be advised to do so, not having taken out a certificate within a year from his admission, without being first admitted? H. S. S.

HOUSE AGENT.—PRACTISING AS ATTORNEY.

A house agent delivers a bill charging (besides his poundage for upholstery) a sum of 10*s.* 6*d.* for drawing an agreement between the party letting and the party taking a house. The bill is objected to by a friend of the party to whom it is delivered, who tells the house agent he has no business to charge in that way; *viz.* the 10*s.* 6*d.* above mentioned. The house agent lets his first bill remain in the hands of his debtor, and delivers another bill, leaving out the obnoxious item, and less by that amount. *No money has been paid* to the house agent. Can the house agent be sued for any penalty, or is he in any way liable for practising as an attorney, without being qualified? J. D.

Law of Property and Conveyancing.

TRUSTEES' POWER TO LEASE.

A marriage settlement contains a power for the trustees, at the request in writing of the husband and wife, to "*dispose of and assign*, either by way of absolute sale, or in exchange" for other premises, the messuages, &c. settled; and to lay out the proceeds of sale, or money received for equality of exchange, in the purchase of other premises to be settled upon the same trusts, &c. as are thereby declared. There is no power to grant leases. The settled premises were let on lease, which has since expired. Can the power above

stated be considered to imply a power to lease; or if not, will a Court of Equity supply the power? A SUBSCRIBER.

DEVISE.—FREEHOLD.

A. made his will as follows:—"I give all my property to my brother John, and appoint my friend *A.* executor hereof, requesting him to accept fifty pounds for the trouble he may have." Signed by the testator, and attested by three witnesses. The testator died, seised of several estates of inheritance, and possessed of several leasehold premises. Will the freehold pass under the above will, or will it go to his heir at law? A CONSTANT READER.

Law of Landlord and Tenant.

NOTICE.—POSSESSION.

A. enters into a written agreement with *B.* to take *B.*'s house, as tenant from year to year. *A.* is to have the privilege of giving six months notice to quit, ending at any quarter day. *B.* tells *A.* to send any thing he may want with him to his (*B.*'s) attorney. *B.* disappears, and cannot be found: it is supposed he is abroad: he has no residence any where in England that can be discovered. *A.* gives six months notice to quit at Christmas 1832, by leaving it at the chambers of the attorney, with his laundress. The attorney then disappears, and cannot be found. 1st, Will this notice be sufficient to rid *A.* of the premises? 2d, How must *A.* give up possession, and the key of the premises? C. L.

Common Law.

PREROGATIVE.

A few weeks since a warrant was taken out by a toll-gate keeper, against one of his Majesty's grooms, for non-payment of toll on passing through the toll-gate *whilst exercising the king's horses*:—can any of your numerous correspondents inform me what decision was come to by the magistrate who granted the warrant; or, if not acquainted therewith, what is the law upon the subject? J. C.

MISCELLANEA.

DEED OF SETTLEMENT FROM STERNE'S TRISTRAM SHANDY.

[We abridge from the humorous notes to Mr. Crisp's Conveyancer's Guide, the settlement made on the marriage of Walter Shandy.

The original, it is said, occupies numerous skins of parchment, and this extract is given until it shall be forwarded from Shandy Hall to the Mausoleum about to be erected for its registration.]

“That the said Walter Shandy, merchant, in consideration of the said intended marriage to be had, and by God’s blessing to be well and truly solemnized and consummated between the said Walter Shandy and Elizabeth Mollineux aforesaid, and divers other good and valuable causes and considerations him thereunto specially moving, doth grant, covenant, condescend, consent, conclude, bargain, and fully agree, to and with John Dixon and James Turner, esquires, the above named trustees, &c. &c., to wit,—That in case it should hereafter so fall out, chance, happen, or otherwise come to pass, that the said Walter Shandy, merchant, shall have left off business before the time or times that the said Elizabeth Mollineux shall, according to the course of nature, or otherwise, have left off bearing and bringing forth children; and that in consequence of the said Walter Shandy having so left off business, he shall, in despite, and against the free will, consent, and good liking of the said Elizabeth Mollineux, make a departure from the city of London, in order to retire to and dwell upon his estate at Shandy Hall, in the county of—, or at any other country-seat, castle, hall, mansion-house, messuage, or grange-house, now purchased, or hereafter to be purchased, or upon any part or parcel thereof:—that then, and as often as the said Elizabeth Mollineux shall happen to be *enceinte* with any child or children, severally and lawfully begot, or to be begotten, upon the body of the said Elizabeth Mollineux, during her said coverture,—he, the said Walter Shandy, shall, at his own proper costs and charges, and out of his own proper monies, upon good and reasonable notice, which is hereby agreed to be within six weeks of her, the said Elizabeth Mollineux’s full reckoning, or time of supposed and computed delivery,—pay, or cause to be paid, the sum of 120*l.* of good and lawful money of Great Britain, to John Dixon and James Turner, esquires, or their executors, administrators, or assigns,—Upon trust and confidence, and to and unto the use and uses, intents, ends, and purposes, following; that is to say,—That the said sum of 120*l.* shall be paid into the hands of the said Elizabeth Mollineux, or to be

otherwise applied by them, the said trustees, for the well and truly hiring one coach, with able and sufficient horses, to carry and convey the body of the said Elizabeth Mollineux, and the child or children which she shall be then and there *enceinte* and pregnant with, unto the city of London; and for the further paying and defraying of all other incidental costs, charges, and expenses whatsoever, in and about, and for or relating to her said intended delivery and lying-in, in the said city or the suburbs thereof. And that the said Elizabeth Mollineux shall and may, from time to time, and at all such times as are here covenanted and agreed upon, peaceably and quietly hire the said coach and horses, and have free ingress egress, and regress throughout her journey, in and from the said coach, according to the tenor, true intent, and meaning of these presents, without any let, suit, trouble, disturbance, molestation, discharge, hindrance, forfeiture, eviction, vexation, interruption, or incumbrance whatsoever; and that it shall moreover be lawful for the said Elizabeth Mollineux, from time to time, and as oft or often as she shall well and truly be advanced in her said pregnancy, to the time before stipulated and agreed upon, to live and reside in such place or places, and in such family or families, and with such relations, friends, and other persons, within the said city of London, as she at her own will and pleasure, notwithstanding her present coverture, and as if she were a *feme sole* and unmarried, shall think fit.”

The indenture then witnesses that for carrying the contract into execution, Walter Shandy grants, &c. the Manor of Shandy, its appurtenances, &c.

“But in order to put a stop to the practice of any unfair play on the part of my mother, which a marriage article of this nature so manifestly opened a door to, and which, indeed, had never been thought of at all, but for my uncle Toby Shandy, a clause was added in security of my father, which was this:—‘That in case my mother should, at any time, put my father to the trouble and expense of a London journey, upon false cries and tokens, that for every such instance, she should forfeit all the right and title which the covenant gave her to the next turn, but to no more; and so on, *toties quoties*, in as effectual a manner, as if such a covenant between them had not been made.’”

The Legal Observer.

VOL. V.

SATURDAY, DECEMBER 29, 1832. No. CXVI.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

THE STATE AND PROSPECTS OF LAW REFORM.

HAVING now arrived at the close of the year, we propose to consider the progress which has been made in the cause of Law Reform during its evolution; to glance at points to which, in our opinion, it should in future be directed; and to state our view of the duties of professional men, respecting its advancement. It is our misfortune, that the plan of our Work obliges us to attempt this in so short a compass; but having always the same object constantly before us, we trust our repeated endeavours to obtain the attention of the profession and the public to our views, will be as effectual as a more lengthened, but single dissertation.

Considering the great measure on the hands of the legislature, during the last session, we think that it could be hardly expected of them to do more than they actually performed in the cause of Law Reform; and most of the acts which were passed, were of the kind which we have always advocated; practical remedies for real and admitted evils. Thus the defective state of our Criminal Code had long been complained of; its evils had been pointed out, and it was full time that another system should be tried. We had therefore the series of acts which mitigate its severity, and provide that, as a general rule, no crime unaecompanied by violence shall be punished by death. The state of our law respecting *process*, was a mass of useless

fiction and mischievous obscurity, unredeemed by any one merit: how proper was it, therefore, to render so important a branch of practice, uniform, certain, and effectual; and how ready must every lawyer be to facilitate a measure like the Uniformity of Process Act. The law relating to Prescription demanded alteration, for similar reasons. It was governed by no fixed rules; it was difficult to acquire and uncertain to act upon, and indefensible alike in theory and practice. There could not be a dissentient voice to its being ameliorated in these respects. The same remark is applicable to many other minor alterations effected in the last session of Parliament, which we have elsewhere stated at length*. There were also several bills brought in which did not pass, of the same character, which we hope to see renewed; measures which, if not calculated to effect any wide or sweeping benefit, precisely answer the purpose intended, and no other. This is the plan of Reform to which we are friendly; and if it were gradually pursued for some time, we have no doubt that the result would be infinitely more fortunate than the sudden alteration of any one part of our juridical system. We are afraid, however, that we must prepare for the introduction of changes very different from that which we have ventured to advocate.

In the first place, we understand that the Lord Chancellor, backed by the Common

* See the series of articles on the "Changes in the Law," in our last and the present Volume.

Law Commission, is determined to force on his measure respecting Local Courts. We know not how it may be modified, or what shape it will now assume; but it must be widely different from the plan proposed by the former bill, or it cannot hope to meet the approbation either of the profession or the public. This has been made sufficiently clear by one of our correspondents^b. While we say this, however, we are by no means opposed to an alteration in the present system, which would place at the command of the suitor, proper courts for the recovery of small debts; but we think this may be obtained by the remodelling of the existing local courts, and not by the introduction of a plan which would alter the whole system of the administration of justice throughout the kingdom, and afford no proportionate benefit.

We presume that the General Registry Bill will be again brought forward, and no doubt with an increased chance of success, by the present Solicitor General. We have repeatedly expressed our opinion of this measure. It should be the last, not the first, of the series of alterations proposed; but still there is doubtless much in its favour, and if the objection with respect to the expensiveness of the plan were once got over, we think its advantages might overbalance its defects.

We trust, however, that the furtherance of these questionable projects will not retard or prevent the prosecution of reforms undoubtedly beneficial. Above all others, we are surprised that the learned commissioners for the reform of our laws (who by the bye should form one body, and act in concert) are not directed to turn their attention to the state of our Statute Law. How long are we to be embarrassed and perplexed by the retainer in our statute books of hundreds of repealed and obsolete acts? Why have we not a report as to this, which has been called for at least as long as the days of Lord Bacon? Still more beneficial, but probably not so practicable, would be a similar labour with respect to our Law Reports—a commission which should expunge all cases overruled, uncertain, unsatisfactory, and unsound; which should reduce the plethoric constitution of our law-libraries to one hundredth part of its present bulk, and which would thus, without any innovation, compose a code of laws which all might possess and

understand. We hope also to see an entire alteration in the present system of Legal Education; the abolition of the whole crew of legal sinecurists, and the enforcement of real protection and remuneration to the working practitioner.

With respect to the further prosecution of Bankruptcy Reform, the Lord Chancellor intimated at the close of the last session of Parliament, that he intended to effect an alteration in the most objectionable part of the present system—the Court of Review; and it would appear that he has not altered this opinion, from the circumstance that the vacancy occasioned on that bench, by the death of Sir A. Pell, has not been filled up. It cannot be doubted for a moment, that at present the Court is very much under-worked, and that a considerable increase of labour might be given in fairness to its learned Judges. Indeed, if law reform be desired, there is sufficient for the legislature to do, which cannot meet with a shadow of objection.

And now we wish to say a few words on the duty of Lawyers with respect to Law Reform. We are sorry to say, that we have often perceived a disinclination in many, to effect any change in the present system. The more crazy and ill adapted to existing purposes the superstructure becomes, the more fondly do some of us cling to it. These obstinately shut their ears to the howling of the storm without, which, if not allayed, will bring destruction on them. They profess to see no blemishes or defects in any part of it, as it stands. Now we warn this portion of our professional brethren of the folly of this conduct. It is their interest, as well as their duty, to do all in their power to remedy all real defects; to be the first to see them, and the first to remove them. They only can do it beneficially. They only can save the whole edifice from ruin. We hope, therefore, that we shall see no opposition to any beneficial reform; that, on the contrary, every assistance will be cheerfully afforded to it; and that we shall give no excuse to our enemies for proceeding with violence, or injustice; and we urge this line of conduct more especially on the eve of the meeting of a Reformed House of Commons; and, without wishing to be romantic, we would have all our friends attend to the common welfare—

————— "*Patriam impendere vitam*
"*Nec sibi, sed toto genitum se credere mundo.*"

^b See the three Letters of "A Barrister," on this subject, in our First Volume.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1831—1832.

No XI.

We shall now point out the changes which have been made in the law by three Acts of some importance, which were passed in the last session of Parliament.

BANKRUPTCY.

The most conspicuous of these is the 2 & 3 W. 4, c. 114,^a which was introduced by Mr. Freshfield. It is enacted by the 6 G. 4, c. 16. §§ 95 and 96, that the Lord Chancellor may, upon petition, direct any deposition, proceedings, or other matter relating to commissions of bankrupt, to be entered of record by a proper person to be appointed by the Lord Chancellor for that purpose, or by his deputy: but the Act contains no sufficient provision for making such depositions or office copies of the record thereof evidence. And by the 1 & 2 W. 4, c. 56. § 13, every fiat of bankruptcy prosecuted in the Court of Bankruptcy, shall be filed and entered of record, but no provision is made for entering of record in the Court, fiats prosecuted elsewhere, and the depositions and proceedings under such fiats, or for the proof thereof. For the remedy of these evils, and because it is expedient that the record of all matters in bankruptcy should be under the same custody, it is enacted that the records of all commissions of bankrupt, and all proceedings under the same, shall be removed into the Court of Bankruptcy, to be there kept in such place, and by such person, as the Judges thereof shall appoint, such persons being for the present the persons heretofore appointed by the Lord Chancellor to enter such proceedings of record (§ 1). Matters enrolled before September 1825, are to be deemed to be effectually entered of record (§ 2.); and a certificate of such entry is to have the same effect as if the commission had been issued before September 1825. (§ 3.) Any one of the Judges of the Court of Bankruptcy may order commissions to be entered of record by the proper officer (§ 4.); and all fiats of bankruptcy and adjudications, appointments of assignees, and certificates of conformity, shall be also entered of record (§ 5.): and the fees for the entry are settled by § 6. No fiat, whether

prosecuted in the Court of Bankruptcy or elsewhere, is to be received in evidence unless first entered of record. (§ 8.) Proceedings in bankruptcy purporting to be sealed with the seal of the Court, are to be received as evidence (§ 9). By § 10, the Lord Chancellor is empowered to direct certain monies standing to the credit of the Secretary of Bankrupts' account, to be carried to the Secretary of Bankrupts' Compensation account, and vice versa.

CONSPIRACIES.

By 2 & 3 W. 4, c. 69, certain enactments are made to restrain corporations from the application of the corporate property to the purposes of the election of members to serve in Parliament. By § 1, this is declared to be unlawful; and all bonds or judgments given for securing the payment of such expenses shall be utterly void. By § 2, all gifts or payments made for the purpose of inducing any person to exert himself in elections at a future time, are to be considered as within the Act. By § 3, all dispositions of real property for the purpose of satisfying or securing any such expenses, are also declared to be void. By § 4, all votes and bye-laws contrary to this Act are declared to be void. By § 5, corporation officers or others making any payments contrary to the Act, are to make good the amount or value so misapplied. In order to frustrate any fraudulent concealment, corporators are empowered to bring actions or suits in the name of the corporation (§ 6). Lastly, it is declared that any member of a corporation who shall offend against this Act shall be guilty of a misdemeanor (§ 7). This Act may be considered rather as a declaratory Act of what the law is on the subject, than an Act introducing any change in the law; because it is pretty clear that a corporation had no common law right to apply the corporate funds for the purpose of securing the return of members.

INSOLVENT DEBTORS.

A slight alteration has also been made in the law respecting Insolvent Debtors, by the 2 W. 4, c. 44,^a which continues the former Acts (7 G. 4, c. 57, and 1 W. 4, c. 38), until the 1st of June, 1835.

By the 7 G. 4, c. 57. § 19; every conveyance and assignment by the provisional assignee, to the assignees of the insolvent, and also a counterpart of every such conveyance and assignment, were required to be filed of record in the Insolvent Debtors' Court: but by 2 W. 4, § 44, assignees are no longer required to execute such counterpart, but in lieu thereof the provisional assignee shall execute every such conveyance and assignment in duplicate, and one part shall be filed of record in the said Court, and a copy of such record shall be evidence. By § 3. it is also enacted, that the commissioners for the purposes of the Insolvent Act may be appointed as well for London and Southwark and the counties of Middlesex and Surrey, as for any other parts of the country.

REVIEW.

An Essay on Marketable Titles. By S. Atkinson, Esq. of Lincoln's Inn, Barrister at Law. Sweet, and Stevens and Sons. 1833.

We should have thought that Sir Edward Sugden's work on Vendors and Purchasers would have superseded the necessity of this work of Mr. Atkinson, as in fact it is a mere amplification—we will not say dilution—of some chapters of that popular treatise. The recent cases and statutes on the subject, however, are fully given, and the whole performance is creditable to the author, although we think, to use a phrase more generally appropriated to romances,—the interest is somewhat spun out. We prefer extracting a note relating to the right of a Court of Equity to direct a case or an action to a Court of Law, as condensing the information supplied by the author, more than in the text.

"The state of the law on this subject is singular: It seems the Court has no authority to direct a case without the consent of the parties; and if such a case be directed, neither the Chancellor (*Prebble v. Boghurst*, 1 Swan. 320) nor the parties to the suit, are bound by the certificate which may be returned. *Sharp v. Adcock*, 4 Russ. 375. Though the Chancellor has no authority to direct a case without consent, for the purpose of informing his conscience, he has power to call in the Judges to give him their opinion as assessors; but what they say is merely opinion and advice, and no way binding upon him. This is well illustrated in the case of *The Duke of Norfolk*, 3 Ch. Ca.

1. In that case Lord Nottingham called in to his assistance the Lord Chief Justice Pemberton, Lord Chief Justice North, and the Lord Chief Baron Montague, all of whom delivered their opinion clearly against that of the Lord Chancellor; but he nevertheless decided on his own opinion. The manner in which, in this most eloquent judgment, his Lordship refers to this point, is very beautiful:—'What hath been said here at the bench on both sides, has been taken in short-hand, and made public. I know the counsel on both sides hath seen it, or will see and look into it well; and if they can give me any reasonable satisfaction that I am in the wrong, I shall easily recede from it; but for anything yet offered, I am of the same mind I was. As to the learned Judges that assisted me at the hearing, *the decree is mine, and the oath that decree is made upon is mine: theirs is but learned advice and opinion.* And therefore, if they can satisfy my conscience that they are in the right, and I not, well and good; if not, I must abide by that decree I have made according to my conscience.' (Ibid. 39.) And again, on a subsequent day,—'In truth, I am not in love with my own opinion, and I have not taken all this time to consider of it, but with very great willingness to change it, if it were possible. I have as fair and as justifiable an opportunity to follow my own inclinations (if it be lawful for a Judge to say he has any) as I could desire; for I cannot concur with the three Chief Judges, and make a decree that would be unexceptionable. *But it is my decree. I must be saved by my own faith, and must not decree against my own conscience and reason.*' (Ibid. 47.) And finally, after having, by the most conclusive series of arguments, delivered with the greatest consideration, and at long intervals, satisfied himself that the settlement which it was the object of that suit to set aside, was 'good both in law and equity,' he concluded thus;—'If I could alter my opinion, I would not be ashamed to retract it; for I am as other men are, and have my partialities, as other men have. When all this is done, I am at the bar desired to consider further of this case. I would do so, if I could justify it; but expedition is as much the right of the subject as justice, and I am bound by *Magna Charta* "*Nulli negari, nulli deferre justitiam.*" I have taken as much pains and time as I could, to be informed. I cannot help it if wiser men than I be of another opinion; but every man must be saved by his own faith, and I must discharge my own conscience. (Ibid. 52.)

In *Wykham v. Wykham*, 18 Ves. 395, the Court of King's Bench, in a case sent for its opinion, certified that certain parties took an estate in fee: the Court of Common Pleas, on the same subject, certified that they took nothing: Lord Eldon differed from them both, and decreed accordingly.

In *Lansdowne v. Lansdowne*, 2 Bligh, 86, Lord Eldon, adverting to a statement, that the Lord Chancellor of Ireland, after the return of the certificate from the Common Pleas, retained an opinion contrary to that certificate,

but made a decree according to it, from deference to the judges of the Common Pleas, observes; "In that, surely, there must be some mistake; for, although it is highly useful in legal questions, to resort to the assistance of courts of law; yet it must be well known by those experienced in the practice of courts of equity, that they are not bound to adopt the opinion of the courts of law to which they send for advice. It has occurred to me," said his Lordship, (adverting, probably to *Wykham v. Wykham*, just cited;) "to send the cause successively to the Court of King's Bench and Common Pleas; and not to adopt the opinion, (though highly to be respected) of either of those Courts."

"The application for the new trial of an issue must be made to the judge, by whom the issue was directed; Lord *Lyndhurst's* Orders in Chancery, No. 47. The party applying for new trial, must, on an *ex parte* application, satisfy the judge that there is reasonable ground for questioning the verdict, before he will send to the judge who tried the issue, for his notes of the trial. *Morris v. Davies*, 3 Russ. 318. Where, on the trial of an issue out of Chancery, it is ordered, that a third party should be at liberty to attend the trial, the counsel for such party will not be permitted to call witnesses or address the jury; on the principle, that if the Court which decreed the issue had intended to allow him this privilege, he would have been made a party to the issue. If he were allowed to address the Court, there appears to be no reason why he should not also be allowed to call witnesses; and if so, then a case might be presented to the Court wholly different from that in contest between the plaintiff and defendant; and by consequence, a different issue raised from that intended to be raised by the order. On this ground, such a party is allowed only to cross-examine, and submit points of law.

"The grounds on which Courts of Equity grant new trials, essentially differ from those on which Courts of Common Law proceed. In *Savage v. Carroll*, 2 Ball & Beat. 445, on a motion for a new trial, on the ground that the verdict had not been supported by evidence, Lord *Manners* laid it down, that "to enable the Court to disturb the verdict, it must be either contrary to the evidence, or given under the misdirection of the Judge." This is a very narrow and imperfect, not to say very erroneous, statement of the grounds on which Courts of Equity grant new trials. The true question is, whether the Lord Chancellor, looking to all the proceedings, both in equity and at law, be satisfied; for if he be satisfied, he will not direct a new trial merely because the Judge who tried the issue miscarried in his direction, or evidence was rejected which ought to have been admitted, or *vice versa*. The leading cases are, *Stace v. Mabbot*, 2 Ves. sen. 552; *Matthews v. Warner*, 4 Ves. 186; *O'Connor v. Cooke*, 8 Ves. 535; *Warden of St. Paul's v. Morris*, 9 Ves. 145; *Pemberton v. Pemberton*, 11 Ves. 50; *Ib.* 13 Ves. 289; *Hampson v. Hampson*, 3 Ves. & Bea. 41; *Ex parte Kensing-*

ton, Coop. 96; *Whalley v. Whalley*, 3 Bligh, 1; *Trimlestown v. Lloyd*, 1 Bligh, N. S. 427; *Powell v. Sonnet*, *ibid.* 545; *Burnard v. Nerot*, 2 Bligh, N. S. 215; and see the references in 8 Bro. P. C. (Index), titles "Issue" and "Trial (New)."

Courts of common law will not answer a case stated as a trust; the question must be raised as on a legal estate; *Parsons v. Parsons*, 5 Ves. 581; *Bailey v. Morris*, 4 Ves. 793; nor will they answer a case on a limitation of money; but it may be stated as a limitation of a term of years, *Doe v. Brabant*, 4 T. R. 710; nor will they answer speculative or hypothetical questions; the case must state an actual conveyance, that will raise the question, *Bliss v. Collins*, 1 Jac. & W. 427; and this, says Lord *Eldon*, is included in the usual direction in the order, that all facts necessary to bring the matter into question are to be stated. (*Ibid.*) The case ought properly to be signed by counsel on both sides; but if the counsel on either side will not sign it, the course is, that they are understood to waive the benefit of it (*Ibid.*).

SELECTIONS FROM CORRESPONDENCE.

No. XV.

We have been prevented for some time from continuing our selections of the numerous letters with which we are favored. A short interval of leisure enables us to review some of our stores. We beg it to be understood, that we cannot hold ourselves responsible for all the statements and remarks of our correspondents, although we occasionally undertake to modify their lucubrations. Our columns, under certain strict regulations, are open to all. "Each party must have equal audience." Justice must be done.

We should, of course, prefer to occupy the attention of our readers, by the most important matters; yet it is a duty which we cheerfully perform, whenever we can be useful, to promote improvements of comparatively an insignificant extent.

ARTICLED CLERKS.

To the Editor of the *Legal Observer*.

Sir,

I was not a little surprised on the perusal of a letter some time ago from an articulated clerk,

at the apparent want of *sympathy*, not to say *courtesy*, that subsists between the solicitor and the clerk in the cases to which he alludes. It cannot be supposed that no difference should be made between the articled clerk, and one who is compensated for his services; or that a youth of good education should be made the mere automaton of him under whom he is studying.

That a sufficient part of the day should be appropriated for the performance of the "office duties," there can be no question; for without practice, theory would be "found wanting;" but at the same time, it seems to me, that such arrangement must be left entirely to the solicitor himself.

Although in an office transacting a very excellent business, it is not deemed necessary for me, or the other articled clerk, to attend there daily more than seven hours at the most, unless business presses; the evenings of course being devoted exclusively to reading.

It must be admitted, that the labor of copying is highly necessary, and in moderation not to be objected to; but when required in large quantities, it defeats its own end. We must bear in mind, that "fame is the spur, the clear spirit doth raise," and it would be very difficult to persuade a youth fresh from Homer, that copying bills in Chancery, and other things equally lengthy, from day to day, was the sure road to the woolsack.

It may be said to depend upon the manner in which the clerk conducts himself while under articles, whether he make his "*labor ipse voluptas*," or not; but it may be found convenient to save a copying clerk in the person of the articled.

A. F. G.

To the Editor of the Legal Observer.

Sir,

Having given the letter of your correspondent, an articled clerk, full consideration, and looking at his remarks in a general point of view, it does appear to me his complaint is by no means well-founded; because, taking into consideration the age, the temptations to which youth is exposed when unrestrained, and the valuable time they would lose in qualifying themselves to become efficient members of the profession at the end of their clerkship, by devoting even two hours in the evening to other and more agreeable avocations,—these are of themselves quite sufficient to shew the indulgence in nine instances out of ten would prove most pernicious to that class of persons. Upon a general principle, however, I certainly think those persons who are of more mature age, I mean managing clerks, or such as are employed in a more ostensible manner, ought not to be required to attend office after seven o'clock; and as many there are, who do not dine until four, or perhaps five, they should not be required to return again that evening, at least during the long vacation; and I was in hopes, from the manner in which the subject

has already been taken up by some of your correspondents, whose communications you inserted in your former numbers, that the Law Society would have promulgated, or at all events recommended the adoption of a rule to that effect.

A PRACTITIONER.

COSTUME OF SOLICITORS IN COURT.

To the Editor of the Legal Observer.

Sir,

It has often been matter of surprise to me, that solicitors have not taken steps to resume their professional costume in the Courts. Gowns are still worn by proctors, and by our brethren in Ireland; but the only occasion on which an English attorney appears in professional costume, is on his admission in the Court of Common Pleas, and then a wretched substitute for a gown is let to him, for a consideration, by the usher. A bench is set apart for attorneys and solicitors in the different Courts; but for the want of an outward and visible sign of those entitled to the use of it, it is more frequently than otherwise occupied by strangers and time-killers, to the great inconvenience of practitioners. A distinction also should be made between the real and the pretended attorney and solicitor. There are enough of disreputable practitioners on the rolls, but there are far more who assume and degrade the character of professional men, without a title to it. I think a gown would, in some degree, operate as a cure for this evil. Should you think the subject worth inserting in your journal, it may induce some correspondent to take up the further consideration of the matter.

WILHELM.

PRETENDED ATTORNEYS.

To the Editor of the Legal Observer.

Sir,

Your correspondent, "VINDAX," (whose letter you inserted some time ago,) is entitled to the thanks of the profession for his exposure of the nuisance which is everywhere shewing itself, of unqualified persons performing the responsible duties of the regular practitioner, producing thereby a threefold injury; viz., fraud upon the latter, loss and injury to the credulous employer, and discredit upon the profession generally. To the list of the "self-created," given by your correspondent, I take leave to add another class of persons. It was but recently that I detected an instance of a city law stationer having prepared a deed of co-partnership and an equity bond, which, in the course of practice, were submitted for my inspection; the former had been left unattested, and this led to the detection; I naturally felt indignant, and in prosecuting my inquiries, obtained possession of the bill and receipt for the charge; here he very cunningly evaded the admission of drawing, by modestly charging

for impressing only, after the rate of eighteen pence per folio. I threatened, and had positively determined to report the whole case to the Law Society; but an old friend interposed as suppliant. The principals in this case had no idea that the law stationer was unqualified; but on the contrary, took it for granted that it was his business to do "law writings," as they termed it, and were greatly surprised to find how the matter really stood; I strongly suspect these things to be more frequent than the profession at large is inclined to suppose.

Y.

CERTIFICATED CONVEYANCERS.

Conveyancing, by common law, belonged to scrivener or notaries—people introduced into Britain by the Romans. The practice of conveying lands to uses, became general in the reign of Edward III. The idea of a use, and the rules by which it was first regulated, are now generally admitted to have been borrowed from the Civil Law. Uses were devisable, though lands at the time were not.

Ancient records prove the existence of notaries under the Saxons, at the incorporation of Lincoln's Inn, at the passing of the statutes of Uses and Frauds, and finally, at the recognition of their right by statute; and some of the honor of the introduction of Uses may be attributed to them. There was a school or college of notaries among the Romans, governed by a superior officer; none were admitted but such as were of good fame, skilful in the laws, and in speaking and writing; and that was determined by the opinion of the college of Tabellions. The Tabellions were employed about the agreements and bargains of private persons. The Scribes were appointed to dress and form the acts and judicial proceedings of the higher judges.

The scriveners had formerly in England exclusive chartered rights in some towns, London and Newcastle, for instance; but which are now lost by non-usage. The attorneys, till within the last century, did not grasp at so much; they confined their practice to suits at law, which was their proper business. See the statutes from Edward I.; but as members of the great law corporation, conveyancing has been held to belong incidentally to their business.

A. B. C.

COMMISSIONERS OF STAMPS.

Mr. Editor,

In reference to an extract in 5 L. O. 138, from Mr. Coventry's recent work; I beg to say, that I have not found "the Commissioners of Stamps invariably insist on the highest duty the case will admit," when I have required an opinion at the Stamp Office. On the contrary, I have known the lowest duty the case would admit, to be officially marked on the instrument presented there, in

a sufficient number of instances to induce me, as far as my limited means of judging extend, to acquit the Commissioners of the imputation cast on them in the above extract.

As an anonymous communication in such a case as this is of no value, I subscribe my name; but in strict confidence that you will not publish it.

Yours, very obediently, D.

LAWYERS IN PARLIAMENT.

To the Editor of the Legal Observer.

Sir,

Will you allow me to correct an error, into which you have fallen, in your last number, when you state Mr. Romilly was returned for Bridport; whereas, that gentleman was one of the successful candidates for Ludlow, in Herefordshire.

As your publication is justly esteemed for the general veracity of its statements, I have deemed it advisable to trouble you with this note; as I should be extremely sorry to see it lose a character it has hitherto so well merited.

A CONSERVATIVE.

[Mr. John Romilly is returned for Bridport; Mr. E. Romilly for Ludlow.—ED.]

DISPUTED DECISIONS.

A CORRESPONDENT, "Studiosus," in the last number, p. 142, has put down among the *Disputed Decisions*, a case of *Simpson's bail*, which appeared in a former number, and which decided that an affidavit of justification was bad, because it merely alleged that the bail were "possessed" of a certain sum, &c., instead of that they were "worth" that sum: and says "that the decision appears contrary to the rule on that subject, which expressly states that each of the bail shall swear that he is 'possessed' of property, &c." Studiosus has evidently not looked into the point; if he had, he would have found that there was no rule requiring bail to swear that they are "possessed" of property, &c. By a rule of T. T. 1 W. 4. R. 3, it was ordered, "that if the notice of bail should be accompanied by an affidavit, according to the form thereto subjoined, and the plaintiff excepted to such bail, he should, if such bail were allowed, pay the costs of justification." This rule was not obligatory, but optional, and might be adopted or not, as parties chose. The word "possessed," in the form of affidavit, appears to have been used inadvertently; for the word "worth" was always used before. See *Stevens's bail*, 1 Chit. Rep. 306, note (a). But all doubt was removed by the late rule of Hilary, 2 W. 4. reg. 1. sec. 19, which expressly ordered that "affidavits of justification shall be deemed insufficient, unless they state that each person justifying is worth the amount

required by the practice of the Courts, over and above what will pay his just debts," &c.

As to the other point mentioned by Studiosus, relative to the notice of bail, the slightest consideration will, I think, convince him that the Court decided right in the case of *Ward's bail*, and that they could have come to no other decision. The rule is correctly stated by Studiosus; what is the object and meaning of it? It is that the bail should give a correct account of their places of residence *during the whole period of six months*. Does a man, who swears that he has resided within the last six months at a particular place, comply with the terms of the rule? Certainly not; for it is consistent with his affidavit that he had lived at that place for a single day only, and during the rest of the six months he gives no account of himself. If the bail had gone on to say, "and at no other place," showing that that was his only place of residence during the six months, it might possibly have been sufficient. But affidavits are always taken most strongly against the party making them; and swearing to the letter is not sufficient, if it does not meet the spirit of the rule.

PRACTICUS.

SUPERIOR COURTS.

Rolls Court.

FRAUDULENT CONVEYANCE.

A trustee conveys the trust estate to a collusive purchaser, after a bill was filed against him to account; the purchaser mortgages the estate for a valuable consideration, pendente lite. Decreed, that the mortgagees do reconvey the estate, for the benefit of those interested under the will.

A bill was filed by the devisees and others interested under a will, against the trustees appointed therein for the administration of the testator's estate. A supplementary bill was afterwards filed by the same plaintiffs against William Horace Kepple, Joshua Mayhew, and William Bankes, charging Kepple with having, by fraud and collusion with Cox, the defendant in the original suit, obtained conveyance of certain estates situated in Hampshire, devised to the plaintiffs; and claiming against the other defendants, to whom these estates were mortgaged for a valuable consideration, that such mortgages should be declared void, and the estate in question reconveyed to the plaintiffs.

The two causes coming on to be heard at the same time, it appeared by the evidence on the part of the plaintiffs, that in June 1830, shortly after the filing of the original bill, a plan was concerted for a mock sale, from Cox to Kepple, of the trust property; upon which money was to be subsequently raised by way of

mortgage. In pursuance of this scheme conveyances of the testator's estate were executed by Cox to Kepple, and sums of 125*l.* and 400*l.* were subsequently raised by Kepple by way of mortgage, on the security of this property, from the defendants Mayhew and Bankes. Cox afterwards absconded to Calais, and Kepple to New York.

The principal allegations in the bill, as to the fraudulent nature of these transactions, were admitted by the defendant Cox in his answer; but Kepple, who appeared to be out of the jurisdiction of the Court, insisted, in his answer, that he was a *bond fide* purchaser.

Mr. Spence and Mr. Goodeve, on the part of the plaintiffs, insisted that the fraud was clearly proved by the evidence against the defendant Kepple; and that with respect to the other defendants, as the pendency of the suit was, by the settled doctrine of the Court, sufficient notice to a purchaser, those defendants (the mortgagees) were clearly liable to the plaintiffs. They contended, therefore, that the estates thus fraudulently mortgaged, pending a suit in that Court, must be reconveyed.

Mr. Kindersly, for the defendant Kepple, contended that the evidence of Camplin, the brother-in-law of Kepple, which was the evidence chiefly relied upon to prove the fraud with which Kepple was charged, was unworthy of credit, inasmuch as it was tainted by the avowal of the witness that he was cognizant of, and a participator in, the alledged fraud. With respect to the liability of Kepple, on the grounds of his having become a purchaser, pending the suit against Cox, he relied upon an agreement between Cox and Kepple for the purchase in question, which was dated on the 4th of April, 1830, the suit not having been commenced until the 1st of May, 1830.

[There was evidence on the part of the plaintiffs to shew that this agreement had been fraudulently concocted subsequently to the institution of the suit; and that measures had been taken to procure a stamp, of which the water-mark might not lead to the detection of the instrument having been antedated.]

Mr. Pemberton and Mr. Bickersteth, for the defendants Bankes and Mayhew, contended, that under all the circumstances of this case, the doctrine by which that Court held an innocent purchaser or mortgagee to be liable, if the purchase or mortgage were made pending a suit, did not apply to their clients.

The counsel for Cox abstained from addressing any observations to the Court, as his client's answer admitted all the fraud with which he was charged in the bill.

The *Muster of the Rolls*.—The facts of this case admit of no doubt whatever. The evidence of Camplin is confirmed by every circumstance of the case. Kepple, therefore, must reconvey all such interest as he possesses in this property, and must pay the costs of the suit. With regard to the other two defendants, Mr. Mayhew and Mr. Bankes, the question as it respects them depends upon the rule of *lis pendens* in this Court—a rule which has often been questioned, but never overturned.

It is a rule which may work hardship in particular cases, but which, upon the whole, may be considered as very beneficial to the public. Looking to the nature of this suit, and to the frame of the bill, I am of opinion that the alienation of Cox, pending the suit, cannot work any prejudice to the plaintiffs; and not only can that alienation work no prejudice to the plaintiffs, but I am of opinion that they cannot be prejudiced by any intermediate alienation. Not only can Kepple take no advantage by an alienation *pending the suit*, but no person claiming under Kepple can take any such advantage. If the rule of *lis pendens* were to be restricted to the alienor, and not to be extended to all claiming under the alienation, its efficacy would, in every instance, be defeated. It is no doubt a very great hardship upon Mr. Mayhew and Mr. Banks; and against these defendants, therefore, the Court will give no costs.—*Robertson and others v. Cox and others*, Westminster, Michaelmas Term, 1832. M. R.

LIABILITY OF TRUSTEES.

An auctioneer appointed by agreement between all parties to a trust, to assist in the execution thereof, and having from the time of such appointment become the only active party in it, charges in his account commission upon the sale of the property, and other expence incurred by him as the auctioneer: Held, that the charges were proper.

The plaintiff conveyed, in 1821, his estate to two persons, upon trust to sell for the payment of debts. In 1824, an auctioneer was called in to assist the trustees, in pursuance of an agreement between them and the plaintiff, and from that time the auctioneer became the active party in the execution of the trust, the original trustees taking no part in it farther than the formal execution of conveyances, the legal estate having been vested in them. The plaintiff filed his bill for an account, amongst other things, against them, and joined the auctioneer as a party defendant. The only question that arose in the cause to be noticed now is, whether the auctioneer, having acted in the capacity of trustee, or as agent or assistant to trustees, could charge for his commission, and such other costs as auctioneers usually charge on account of business transacted in the execution of a trust.

The counsel for the plaintiff contended, that the office of a trustee was purely gratuitous, and was looked on with so much jealousy and rigour by this Court, that a solicitor would not be allowed to charge for professional business done by him in the capacity of a trustee. A person appointed a trustee might renounce the office, but was not to make profit of it.

The counsel for the defendants urged, that the auctioneer in this case was called in to assist in the management and sale of the pro-

perty, by agreement between the other defendants and the plaintiff. Taking it even that this auctioneer acted as trustee, still they submitted that if his commission and other charges made by him upon the sale of the property were not allowed, the liabilities and burthens of trustees would be so onerous, that no one in his senses would undertake the office of executor or trustee.

The *Master of the Rolls* was of opinion that, without at all infringing on the general principle laid down by this Court in regard to trustees, the charges made in this case for commission, &c. were properly made.—*Ovey v. Hoggart and others*, Westminster, Michaelmas Term, 1832. M. R.

WILL.—SPECIFIC LEGACY.

A testator makes a bequest of long annuities which then stood in his name, but which he afterwards exchanges for another description of annuities, and confirms by a codicil the specific legacies given by his will: Held, that the bequest failed, as the long annuities did not exist at the time of testator's death, and there was no misdescription of the legacy.

The question in this case arose upon the construction of a will, by which the testator bequeathed, among other specific legacies to different persons, 50*l.* long annuities to his widow. The testator was, at the time of making his will, in possession of long annuities exceeding that amount; but he subsequently exchanged the long annuities for an equal amount of new annuities, receiving a bonus. In a codicil added to his will, after this transaction, he confirmed all the specific legacies given by his will. The question now was, whether an equal amount of the new annuities passed to the widow by virtue of the bequest of long annuities?

The *Master of the Rolls*, after hearing counsel on both sides, said, that where there was a misdescription of a specific legacy, this Court would relieve the legatee, and effectuate the clear intention of the testator. It was true that a codicil, confirming the dispositions of a will, operated as a republication of that will; and that the will might be read as of the date of the codicil. But the fallacy of applying these principles in aid of the present case, consisted in supposing that there was a misdescription of the specific legacy. There was no misdescription; the specific gift was correctly described in the will as 50*l.* long annuities; and as these annuities did not exist in specie at the death of the testator, the Court was bound to pronounce that this part of his property was undisposed of.—*Battison v. Battison*. Westminster, Michaelmas Term, 1832, M. R.

King's Bench Practice Court.

JUDGMENT AGAINST THE CASUAL EJECTOR.

If two terms elapse after the service of a declaration in ejectment, the Court will not grant a rule for judgment against the casual ejector on that service, in the third term.

Erle moved for judgment against the casual ejector. The declaration was served in the vacation of Hilary Term, and required an appearance in Easter Term. That term and Trinity Term had both elapsed without any application being made for judgment against the casual ejector.

Littledale, J.—If you only allow one term to go by, after the service, I can grant the rule; but if you permit two terms to elapse, I can't grant it. It is contrary to the practice of this Court.

Rule refused.—*Doe v. Roe*, Nov. 10th, 1832. K. B. P. C.

ATTORNEY.—JUDGES' CHAMBERS.

Unless there is a cause in Court, an application cannot be made at chambers against an attorney.

Miller made an application to the Court, requiring an attorney to pay over a sum of money, which, it was alleged, he detained improperly in his possession.

Littledale, J. suggested, that the application might have been made by summonses at chambers, as a less expensive method of proceeding.

The Master stated, that as no cause appeared to be in Court, an application could not be made against an attorney at a judge's chambers.

Littledale, J. permitted the application to be made.—*Ex parte James*, Nov. 10th, 1832. K. B. P. C.

PRISONER.—LORDS' ACT.—CONTEMPT.

Where a prisoner, brought up under the compulsory clauses of the Lords' Act, is not prepared with her schedule, and she refuses to claim her sixty days, the Court is bound to allow them to her.

The defendant in this case was brought up before the Court, under the compulsory clauses of the Lords' Act, the 32 Geo. 2, c. 28, at the instance of the plaintiff, for the purpose of compelling her to assign her property. When she appeared, she was not prepared with her schedule. She was asked, whether she claimed her sixty days, for the purpose of preparing it. She said she would not claim her sixty days; and that, rather than assign her property for the benefit of the plaintiff, she would be transported.

Platt, on the part of the plaintiff, contended, that the defendant was in contempt, by not

claiming her sixty days; and, therefore, the plaintiff was at liberty to prosecute her.

Littledale, J.—It appears to me, that the clause under which the sixty days are allowed to the prisoner, does not render it necessary for her to claim those days; but the Court is to allow them to her. She must, therefore, be prepared with her schedule in sixty days from this time. The defendant must be remanded for sixty days to the custody from which she has now been brought.

Prisoner remanded.—*Pierce v. Davidson*, Nov. 10th, 1832. K. B. P. C.

BAIL.—RELEASE BY PLAINTIFF.

A mere honorary obligation on the part of a plaintiff not to press a defendant for payment of debt and costs, is not such an indulgence to him as will release his bail.

If a plaintiff, by an agreement with the defendant, quickens his remedy against him, the bail are not thereby released.

Platt shewed cause against a rule for setting aside a judgment on a *sci. fa.* against bail. The grounds on which the rule was obtained were two; first, that the plaintiff had given time to the defendant; and secondly, that the bail had not been summoned, and had not received any notice of the proceedings by *sci. fa.* against them. Notice of trial was given for the sittings in last Hilary Term. The defendant's attorney, before trial, called on the plaintiff, and offered, on the part of his client, to give a *cognovit* for the amount of debt and costs. The offer was accepted, and the *cognovit* given. The defendant afterwards requested, that the plaintiff would give him time to pay the debt and costs. The plaintiff told the defendant he "might rely on his honor." These are the facts. The principle on which bail are held to be released, in consequence of the plaintiff dealing with the defendant, is, that the plaintiff having entered into an agreement with the defendant, he has thereby placed the bail in a worse situation than they would otherwise be. But first, there has been no indulgence granted here; for the mere honorary vague answer of the plaintiff to the defendant's request for time, cannot be considered as an indulgence to him. Secondly, by taking the *cognovit*, the bail have been placed in no worse situation. The trial was to have taken place at the sittings in Hilary Term. The *sci. fa.*, therefore, could not have been made returnable until Easter Term. The bail were, therefore, placed in no worse a situation by the plaintiff accepting the *cognovit*; but, on the contrary, in a better situation; because, by it, the remedy of the plaintiff against the defendant was quickened. Then as to the objection that the bail had not been summoned or served with notice; a Judge's order has been made empowering the plaintiff to sign judgment on the *sci. fa.* It is, therefore, too late to take that objection now.

Follett contended, that the plaintiff must, un-

der the circumstances, be considered as having given time to the defendant, and therefore, that the bail were released.

Littledale, J.—The plaintiff was not bound at all by the answer he gave to the defendant's request for time to pay the debt and costs; and therefore he could not be considered as granting him any indulgence. By taking the *cognovit*, the plaintiff did not place the bail in a worse situation, but rather in a better one, than that in which they would have been if no *cognovit* had been taken. As to the want of notice to the bail of this proceeding by *sci. fa.* against them, as a Judge's order for signing judgment has been made, we cannot now inquire into the sufficiency of the notice. If the bail intended to avail themselves of that objection, they should have applied to set aside that order. The rule must therefore be discharged.

Rule discharged.—*Ladbroke v. Hewett*. Nov. 6th, 1832. K. B. P. C.

Exchequer.

AMBASSADOR.—PRIVILEGE.

Although an ambassador's servant may be privileged as to his person, it does not follow that all his goods are privileged also, so as to enable the sheriff to apply to set aside a h. fa. issued against them: and a clear case of privilege must be made out to the satisfaction of the Court, or else they will not interfere either on behalf of the sheriff or the person privileged.

Query—whether a chorister who merely officiates at a chapel where a foreign ambassador attends divine service, is privileged as being the servant of an ambassador?

When application is to be made for relief or indulgence, it ought to be made without delay.

Follett showed cause against a rule obtained by *Holt* on a former day, calling on the plaintiffs to show cause why the writ of *fieri facias* issued in this cause against the goods of the defendant should not be quashed, on the ground that the defendant is a privileged person. This application is made on behalf of the sheriff: and the affidavit of the sheriff's officer states, that after he had received the writ he found that the defendant's name was in the list of privileged persons returned by the Secretary of State and put up in the sheriff's office: that no indemnity had been given: that the defendant is not a trader: that he is *bond fide* attached to the Bavarian embassy: that he acts as chorister in the Bavarian chapel, and is in the suite of the Bavarian ambassador: and in the list of persons in the Bavarian embassy, sent to the Sheriff in 1828 and annexed hereto, the name of the defendant is specified.

The affidavits in answer state that the defendant is not a Bavarian subject, nor a

native of Bavaria, but of France: that he came here in 1814: that he has been a public singer and a teacher of music: that he composes and sells music, and the name of Signor Begrez is put to his compositions: that he is not a domestic servant, nor is he described as doing any domestic service. The Bavarian chapel is in Warwick Street, Golden Square, and is not in the house of the Bavarian minister, nor attached to it: the ambassador lives at No. 4, Queen Ann Street.

Holt.—My affidavit states that he is in the habit of performing as chorister, and performed the Sunday before.

Follett.—The Bavarian minister knows nothing about him, and refuses to give any information about him. There is no pretence for the sheriff to come here to have this writ quashed. The defendant is not within the statute. The 7 Anne c. 12, s. 3, enacts, "that all writs and processes against the person or goods of an ambassador or other public minister of a foreign prince or state; or the domestic servant of such ambassador or public minister, shall be utterly null and void." In the first place the defendant is not a domestic servant; and secondly, if he were, the statute does not extend to protect all persons, even domestic servants, without showing what their duties are, and what the ambassador has to do with them. After the passing of the statute of Queen Anne, persons residing here got themselves put down in the list of persons to be protected: most of them were attached to the Bavarian ambassador, who made a profit by it.

[*Bayley, B.* to *Holt.*—You must not only be privileged, but privileged as to the goods: *Holt.*—Yes.]—If a person is *bond fide* attached to an embassy and receives a salary, he may be protected though he does not lie in the house, as was decided in *Evans v. Higgs*, 2 Stra. 797; that was the case of a secretary to an ambassador; but it was there sworn, that the nature of his employment required his attendance at the house: and in *Widmore v. Alvarez*, Fitz. 200, it was expressly held, that there must be some actual service at the house: here there is no service whatever at the house, nor does the defendant reside there; whatever service there is, is at the chapel. So in *Sacomb v. Bowdoin*, 1 Wils. 20, it was held, that a chaplain to a resident ambassador was not protected, because it was not shown that he did any duty in the house. In *Triquet v. Beth*, 3 Burr, 1478, actual attendance and actual service at the ambassador's house were expressly sworn to: and Lord Mansfield held, that though every particular act of service need not be specified in the affidavit, yet actual *bond fide* service must be proved. The affidavits here do not show a *bond fide* service, and the fact of the name being in the list in the sheriff's office, is no reason for the sheriff not returning the writ if it can be shown that the appointment is not *bond fide*, but merely colourable: as in *Delvalle v. Plomer*, 3 Campb. 47, where in an action against a sheriff for a false return

of *nulla bona* to a writ of *fi. fa.*, Lord Ellenborough held, that though the name of the person against whom the writ issued was in the list of persons stuck up in the sheriff's office, intimating that she was a domestic servant of the Hessian minister, and had a written appointment as housekeeper, the sheriff was bound to ascertain whether she was really a servant; and that if she was not, the appointment and notice were mere nullities. *Novello v. Toogood*, 1 B. and C. 554, is an authority against the application: it was there held, that where the servant of an ambassador did not reside in his master's house, but rented and lived in another, part of which he let in lodgings, his goods in that house, not being necessary for the convenience of the ambassador, were liable to be distrained for poor rates. That case is consistent with all the authorities. But a servant is not protected if he trades: Signor Begrez has been here since 1814, teaching music and selling music: and it is not shown that the defendant has no goods liable to be taken but what are necessary for the convenience of the ambassador.

[*Bayley, B.*—Do you find any instance of the sheriff being exonerated, from returning the writ?—Yes—Where defendant has been arrested, but not in a case like this.]

Holt, in support of the rule.—All cases must be decided, with reference to the principle and policy of the statute of Anne. It is a part of our national law. In *Novello* and *Toogood*, it was admitted to extend to all domestic servants.

[*Bayley, B.*—It is not stated, that the defendant is a servant of the Bavarian minister, and employed by him in the chapel.] The sheriff finds the name of Begrez in the list of privileged persons. How can it be said that he is bound to make enquiries? If the sheriff were to proceed, he might subject himself to an action.

[*Gurney, B.*—The act does protect all goods. The sheriff now comes, and says, that he has not taken the goods, because the defendant is servant to an ambassador. You don't say he is not a trader. All you say is, you have made inquiries, and believe he is no trader.

Bayley, B.—There must be many people in the habit of attending the chapel, who could say whether they have seen the defendant there. You only say he officiated last Sunday.]

Holt.—If he was a chorister in 1823, it is sufficient for me. The ambassador and the Secretary of State certify that he is exempt as chorister. The sheriff is not bound to make enquiries whether he is so, and how often he has officiated. The statute certainly says, that no merchant or trader shall take advantage of the act; but the sheriff enquired, and was told he was not a trader. Mr. Begrez is at this time attached to the embassy. The first point, therefore, is made out, that the defendant is a chorister in actual service. More strictness may be required where the party himself applies, than where the sheriff applies. The distinction is important. Collusion is not imputed. Secondly, it is said to be a qualified

proviso in the act; that the description of the goods is not shewn; that we might have levied on other goods, and left sufficient for the service of defendant as chorister; but no distinction has ever been made between the goods and the person.

Bayley, B.—We are all of opinion on the first point. You apply for indulgence, for you are bound to make a return. The writ is directed to the sheriff; and the strict rule of law is, that he ought to make a return when called on. He has neglected to do so. The sheriff may ask for indulgence to quash the writ and supersede any liability, and stay proceedings *in limine*. And if he shows sufficient to satisfy the Court they ought to do so, no doubt they would; but if there is not sufficient, the sheriff must make his return. Why does the sheriff ask to have the writ quashed? The statute speaks of ambassadors and domestic servants: but the name must also be in a list in the sheriff's office, to make the sheriff answerable. That comes in by way of proviso, where it appears the sheriff would do wrong in executing the writ; that is, as to the ambassadors and domestic servants; but he must satisfy the Court that the defendant is a domestic servant. It is not necessary he should live in the house. But it is not made out that he is part of the suite of the Bavarian minister. I don't allude now to the privilege of person, as distinguished from goods. We don't enter into that. Lord Palmerston, in June, 1821, puts the defendant's name in the list: that only ascertains that Begrez was at that time a domestic servant of the Bavarian Minister; whether he remained so at 1832 is another question, and must be ascertained by other means. The sheriff who applies in this extraordinary way, ought to satisfy us that he really is attached to the Bavarian embassy, and not raise a mere inference. The affidavits are meagre in the extreme. He has not asked the servants of the Bavarian minister, nor persons attending the chapel. He says that Begrez is *bond fide* attached to the Bavarian embassy; but not *how* attached: he may have been attached, and yet not so as to prevent an officer from executing process.

Vaughan, B.—A writ of execution comes into the hands of the sheriff on the 16th of June. He applies here, on the ground of process being directed against a domestic servant of an ambassador, whose goods are about to be distrained: he desires in fact to be absolved from returning all process of this nature. The statute of Anne may be considered as declaratory of the law of nations, rather than as enacting any new law. The sheriff having been ruled on the 2d day of November to return the writ, he does nothing till the 12th, and then he makes this application. He ought to have applied earlier. The only service the sheriff speaks to, is on the 4th (two days after the rule was obtained), when he says he believes he officiated. The question is, whether we are to interfere. He is bound to satisfy us, so as to leave no doubt that the defendant is a servant, and that the application is made *bond fide*.

Bulland, B.—It is not necessary for us to decide whether a chorister is protected. I have a strong opinion that he is. The word "domestic" ought not, as in the case in *Burrows*, to be confined, but extended. If it is a chapel attached to the embassy, and it was brought home, I should think he ought to be protected. No credit or reliance can be placed on the list; for I find there the name of a person who is a clerk in the long room at the Custom House. He holds incompatible offices; he has one duty to perform to the ambassador, and another to the public.

Gurney, B.—This rule must be discharged. Rule discharged, with costs.—*Fisher and another v. Begres*, Nov. 22d, 1832. Exch.

NOTES OF THE WEEK.

LAW CLASS, KING'S COLLEGE.—DISTRIBUTION OF PRIZES.

At the conclusion of Professor Park's Course on the Practice of Conveyancing, the prizes were distributed, as follows:—

To Mr. John Lethbridge Cowland, for the best essay on the Republication of Devises of Real Estate by Codicil;—to, Mr. John Court Burford, for the highest examination in the senior class;—and to Mr. Richard Gill, ditto, junior class.

Certificates of high rank in examination were also given, in the senior class, to Mr. Edward Hugh Edwards, Mr. J. L. Cowland, and Mr. H. Money Wainwright; and in the junior class, to Mr. Thomas Simons Watson, Mr. James Lane, and Mr. Josiah Wilkinson.

The Professor expressed himself highly gratified with the result of the examinations, and also attributed great merit to the Essays of Mr. William Speed, Mr. Thomas Avison, Mr. Edward Harper, and Mr. John Guest.

CRIMINAL LAWS.—SECONDARY PUNISHMENTS

We have inserted, in the Supplement for the present month, a careful abstract of the Report of the Select Committee of the House of Commons on Secondary Punishments. The Report and Evidence are of considerable length. Our readers will find the summary we have given, to contain all the proposed alterations in the treatment of the various Classes of Criminals, which the Committee recommend to be adopted.

This document will shew that in no part of the Law is reform so much needed as in the administration of Criminal Justice, especially at the Hulks and in the Penal Colonies.

SITTINGS IN CHANCERY.

These Sittings will be resumed on the 9th of January, on which day Petitions will be heard, and on the 10th the Seal before Term will be held at Lincoln's Inn, before the Lord Chancellor and Vice Chancellor.

The Master of the Rolls will not sit till Friday the 11th of January, being the first day of Term.

ANSWERS TO QUERIES.

State of Attorneys.

ARTICLED CLERKS. PP. 132, 146.

O. H., in his answer to the query of your correspondent "Student," has overlooked § 9. of 22 G. 2. c. 46, where it is clearly stated, that if the contract between an attorney and his clerk be cancelled by mutual consent before the five years are expired, and the clerk be afterwards bound by contract in writing to serve, and shall actually serve another attorney for the *residue* of the five years, such service shall be deemed as good and effectual as if the clerk had continued to serve the person to whom he was originally articulated: provided an affidavit of the execution of such second articles be made and filed within three months after the date of the same. The second articles require a stamp of 1*l.* 15*s.* only; 55 G. 3. c. 184. S. N. R.

CERTIFICATE.—RE-ADMISSION. P. 147.

A. may safely now take out his certificate, and practise. G. R.

State of Property and Conveyancing.

INTEREST ON LEGACY. PP. 131, 146.

I should feel extremely much obliged to your correspondent O. H.; if he would give the authorities which warrant his assertion that "lawful interest means 5*l.* per cent." *Lawful* interest is a very general expression; and taken in its widest sense, would include any rate of interest not exceeding 5*l.* per cent., in England; but the Court of Chancery would most probably interpret it as meaning 4*l.* per cent., that being the usual rate of interest allowed by that Court. E. W.

DEVISE.—FREEHOLD. P. 147.

In answer to the question of "A Constant Reader," respecting the devise of freehold estates under the word "*property*," I apprehend that the intention of the testator, as well as the wording of the will, must be considered. The will is attested by *three* witnesses, and *that* alone shows that it was the testator's full intention that his freehold estates should pass to his brother John under his will; but whether they pass for *life* or *in fee*, is another question, to be answered by some of your correspondents, the requisite word "*heirs*" being wanting.

C. R. W.

DEVISE.—ENTAIL.—RECOVERY. P. 131.

It appears to me, with deference to H. H. P., this query is set out mistakingly, in deeming Sarah and John to be the tenants in tail. How could that be, when they appear and come in as the children of *S. C.*, the tenant for life, under that part of the devise merely "to the use of all and every child and children of the said *S. C.*, to be equally divided between them as tenants in common, and not as joint tenants"? I apprehend this makes them tenants in fee simple, in the event of no issue by them, to vest in tail the contingency before recovery suffered. Now in this case, it appears Sarah and John had one son each *in esse* at the time of suffering the recovery; and I clearly think the recovery bad, on the ground that such two sons respectively had a vested contingency, as issue in tail *eo instantis*, the moment they were born, under that clause of the devise, "And of the several and respective heirs of the body and bodies of all and every such child and children lawfully begotten;" and am the more confirmed in this view of the case, when H. H. P. states the real estates to have been in special trust to preserve the contingent remainders. T. T. P., in answer, p. 146, declares no necessity existed for the concurrence of the trustees; surely this cannot be correct. Who holds the legal and equitable interest for preservation? why the trustees: if so, then for what reason were they not made parties to the recovery? Are they to be deemed non-entities? assuredly not.

A. Z.

QUERIES.

Criminal Law.

FORGED WARRANT OF ATTORNEY.

A. being indebted to *B.* in a considerable sum, and unable to meet the demand, proposed two friends, *C.* and *D.*, to join in a warrant of attorney for the payment thereof, at a stated period. The known respectability of

C. and *D.*, induced *B.* to agree to the proposition, and the warrant of attorney was executed, and judgment signed thereon *instantly*. A short time afterwards *A.* absconded, and it turns out on enquiry that *C.* did *not* execute the warrant of attorney, but that *A.* procured some one to personate him, and sign it in his name. Is *D.* exonerated from all obligation by reason of the forgery? Or if not, what course should *B.* adopt, when the time for payment arrives?

H. C. N.

Common Law.

CARRIERS' LIABILITY.

Is a carrier, who has given the following notice,—“in pursuance of an act of parliament passed in the first year of the reign of king William the Fourth, c. 68, no parcel above the value of 10*l.* accounted for, if lost or damaged, unless entered and paid for accordingly,”—liable to pay for the loss or damage of any parcel, if under that value.

P.

Practice.

EVIDENCE.

I am interested in a cause in a court of equity, where one of the defendants, the executor and trustee, by his answer, admits the receipt of certain letters, and admits also that a will was made of the date mentioned in the bill; but for his certainty as to the will (which he states is incorrectly set forth,) he refers to the same, and letters when produced to the Court. I should feel obliged by being informed, whether it will be necessary to prove these letters (as to handwriting, &c.) before the Examiner, on written interrogatories exhibited to witnesses, or whether it will be sufficient to prove the handwriting of the letters before the sitting Registrar in Court on the day of hearing the cause. The will, it is supposed, is at Doctors' Commons, or in the defendant's custody; if the former be the fact, must the will be produced by a person from Doctors' Commons? and if so, *how far proved* before the Examiner in writing, (the defendant being a witness to its execution;) or can it be proved, and how, on the day of hearing the cause? One of the defendants, the heir at law, admits the will, but says it is not correctly set forth in the bill.

A SUBSCRIBER.

PROCURATION FEE.

In the case of loans on mortgage and annuities, does the procuration fee belong to the solicitor of the lender, or to the solicitor of the borrower?

X. Y. Z.

NOTARIAL PRACTICE.

Does an attorney incur the penalty under 41 G. 3, c. 79, by taking into his office a notary, to do certain business, peculiar to the office of notary, such as make protests, notarial acts, &c. The salary paid is small, inadequate to the services to be performed; but which is made up by the profits of the protests, &c. The attorney in this way takes the profits of the notarial business, and "acts in the name of the notary for his own reward;" the notary receiving no more than a clerk usually does; and the attorney secures to himself the profits of deeds connected with the notarial business, which otherwise might go to the notary, and enable him to sustain his proper character. The practice being generally repudiated by the profession, it is to be hoped you will give it publicity.

N. P.

MISCELLANEA.

LORD BACON'S CONFESSION.

THE following "humble confession and submission" of Lord Chancellor Bacon, is equally curious for the candour of its acknowledgements, and the excuses it contains. It tends to illustrate also the method of administering justice about Two Centuries ago.

1. To the first article he confessed, "That upon a reference from his majesty, of all suits between Sir Rowland Egerton and Edward Egerton, both parties submitted to his award, by reciprocal recognizances in ten thousand marks a-piece: that, after divers hearings, he made his award, with the advice of Lord Hobart; and some days after, the 300*l.* mentioned in the charge, were delivered to him from Sir Rowland. That Mr. Edward Egerton flying off from the award, a suit was begun in Chancery by Sir Rowland Egerton, to have the award confirmed; and a decree was made thereupon.

2. To the second article, he confessed, "That soon after his coming to the seal, when many presented him, he received the 400*l.* mentioned in this article, of Mr. Edward Egerton; but as he remembered, it was for favours past.

3. "That in the cause between Hody and Hody, about a fortnight after the cause was ended, there were gold buttons, about the value of 50*l.* presented him.

4. "That in the cause between the Lady Wharton and the coheirs of Sir Francis Wilmoughby, he received of the Lady Wharton 200*l.* in gold, and at another time an hundred pieces, while the cause was depending.

5. "That he received of Sir Thomas Monk one hundred pieces, but it was long after his suit was ended.

6. "That he received of Sir John Trevor, as a new-year's gift, 100*l.*, but he confessed it was while his cause was depending.

7. "In the cause between Holman and

Young, he received of Young 100*l.*, but it was long after the cause was ended.

8. "That while the cause was depending between Fisher and Wrenham (or Wraynham), he did receive of Sir Edward Fisher a suit of hangings, of the value of about 160*l.*, towards furnishing his house; and was at the same time presented by others, who were no suitors, with furniture for his house.

9. "As to the charge of his receiving a cabinet, of the value of 800*l.*, of Sir John Kennedy; a cabinet was indeed sent to his house by Sir John, but not of half that value; but he refused to accept it, and was determined to send it back again! that one Pinkney, who stood engaged for the money to pay for the cabinet, desired he might have it; and thereupon Sir John entreated his lordship that he would not disgrace him by returning the gift, much less put it into a wrong hand; and that he was ready to return it to whom their lordships should appoint.

10. "He confessed he had borrowed 2000*l.* of Vallore; but looked upon it as a debt, and was obliged to repay it.

11. "He acknowledged his receiving 200*l.* of Mr. Scott, about a fortnight after the decree passed for him.

12. "That he received 100*l.* of Sir John Lenthall, about a month after the decree passed.

13. "That the cause between Wroth and Manwaring was ended by his arbitrement, by consent of parties, and he received of Mr. Wroth 100*l.* about a month after the cause was ended.

14. "That he received of Sir Ralph Hansbye, while his cause was depending, 500*l.*

15. "That he did borrow the 500*l.* mentioned in this article, of Compton; but looked upon it as a debt, which he was obliged to repay.

16. "In the cause between Sir William Brounker and Awbrey, he did acknowledge his receiving 100*l.* of Awbrey.

17. "He confessed he received money of the Lord Montague, while his suit was depending, to the amount of 6 or 700*l.*

18. "He confessed his receiving 200*l.* of Mr. Dunch; but thought it was some time after the decree.

19. "He confessed his receiving 200*l.* of Sir George Reynell, his near relation, at his first coming to the seal, to be bestowed in furniture; but thinks this was before any suit began; and as to the diamond-ring, he received of him, while his cause was depending, charged to be worth 5 or 600*l.* it was not of near that value; though he confessed it was too much for a new-year's gift.

20. "He confessed his receiving 100*l.* of Mr. Peacock, at his coming to the seal, as a present; and that he afterwards borrowed 1000*l.* of him, at twice; for which, he said, he would take no security or interest, and gave him his own time for repaying it.

21. "He confessed his servant Hunt did receive 200*l.* of Smithwick; but that he ordered it to be repaid.

22. "That he did receive of Sir Henry Russell 3 or 400*l.* about a month after the cause was decreed; in which decree he was assisted by two of the Judges.

23. "He confessed he received of Mr. Barker the 700*l.* mentioned in this article, some time after the decree passed.

"As to the 24th, 25th, and 26th articles, he confessed he received the several sums therein mentioned, viz., of the grocers 200*l.*; of the apothecaries, that stood with the grocers, a tester of gold worth 4 or 500*l.* and a present of ambergrease; and of a new company of apothecaries, that stood against the grocers, 100*l.*, but this was no judicial business, he observed, only a composition between the parties; and he thought, as they all received benefit by it, and were all three common purses, there was no great matter in receiving what they voluntarily presented.

"As to the 27th article, in which he is charged with taking of the French merchants 1000*l.* to constrain the company of vintners to take 1500 tuns of their wine, with threatening and imprisoning the vintners because they would not take their wines at higher prices than they were vendible; he confessed, Sir Thomas Smith did deal with him in behalf of the French company; informing him, that the vintners, by combination, refused to take their wines at any reasonable prices; and that this would destroy their trade, which the state was concerned in; and that the company would gratify him with 1000*l.* for the trouble he should take in it. He did, he confessed, thereupon endeavour to compromise matters between them, and prevent a suit, propounding such a price as the vintners might gain 6*l.* a tun: and the king afterwards recommending the business to him as a matter that concerned his customs, he dealt the more peremptorily in it, and did for a day or two restrain some of those that were the most stiff in a messenger's hands: and afterwards the merchants presented him with 1000*l.*

"To the 28th article, that he had given way to the exactions of his servants, in respect of private seals and injunctions, he confessed it to be a great fault, that he had looked no better to his servants.

"And now he again confessed, that in the points charged upon him, though they should be taken as he had represented them, there was a great deal of corruption and neglect, for which he was heartily sorry, and submitted himself to the mercy of the court.

"He desired that their lordships would look with compassion on his person and estate, and consider he was never esteemed an avaricious man; that there were few or none of these particulars that were of less than two years standing; from whence he insinuated, that he had reformed these practices, instead of increasing his corruptions; and his estate was so inconsiderable, that his chief care was, how he should be able to pay his debts.

"Concluding with his humble suit, that their sentence might be mixed with mercy; and that

they would be intercessors for him to his Majesty for his grace and favour."

COLONEL BLOOD'S PARDON AND SUBSEQUENT CONDUCT AND DEATH.

AFTER Blood had been detected and again secured in the Tower, he became not only silent and reserved, but dogged and sullen.

He soon changed his temper, however, when, contrary to all reason, probability, and his own expectation, he was informed the king intended to see and examine him himself. This was brought about by the duke of Buckingham, then the great favourite and prime minister, who infused into his majesty, (over whom he had for some time a great ascendancy,) the curiosity of seeing so extraordinary a person, whose crime, great as it was, displayed extraordinary force of mind, and made it probable, that, if so disposed, he might be capable of making great discoveries. He is allowed on all hands to have performed admirably on this occasion: he answered whatever his majesty demanded of him, clearly, and without reserve; he did not pretend to capitulate or make terms, but seemed rather pleased to throw his life into the king's hands by an open and boundless confession.

His story and behaviour made such an impression on the mind of his sovereign, that he was not only pardoned, but set at liberty, and had a pension given him to subsist on. This conduct of his majesty towards so high and so notorious an offender, occasioned much speculation, and many conjectures.

His interest was for some time very great at Court, where he solicited the suits of many of the unfortunate people of his party with success: but as this gave great offence to some very worthy persons while it lasted, so, after the disgrace and dissolution of the ministry, styled the Cabal, it began quickly to decline, and perhaps his pension also was ill paid; for he again joined the mal-contented, and acted in favour of popular measures that were obnoxious to the court.

He was prosecuted for *scandalum magnatum*, and soon after fell into a lethargy; and on the 24th Aug. 1680, died.

Such was the notion entertained by the generality of the world of this man's subtlety and restless spirit, that they could neither be persuaded he would be quiet in his grave, nor would they permit him to remain so; for a story being spread that this dying, and being buried, was only a new trick of Colonel Blood's, preparatory to some more extraordinary exploit than any he had been concerned in, it became in a few days so current, and so many circumstances were added to render it credible, that the coroner thought fit to interpose, ordered the body to be taken up again on the Thursday following, and appointed a jury to sit upon it. By the various depositions of persons attending him in his last illness, they were convinced, and the coroner caused him to be once more interred, and left in quiet.

The Legal Observer.

Vol. V. SUPPLEMENT FOR DECEMBER. No. CXVII.

— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

LAW TRACTS.

No. XI.

WHAT IS SPECIAL PLEADING?

THE nature of Special Pleading is not only misunderstood by the public—which cannot be wondered at; but it is not duly estimated by a large class of the profession. Among the sweeping changes which are contemplated, not only in the Law, but in its mode of procedure and administration, it is time that we particularly notice the forms of judicial proceedings which bear the name of *Special Pleading*.

We consider this art as the logic of the law. It defines the limits, and circumscribes the extent of the question to be submitted to the consideration of the Court, on an issue of law, or to the decision of the jury on an issue of fact. Abuses may have crept into the details, which may require correction; but to abrogate all settled forms of proceeding would be, we are persuaded, the most serious blow that could be struck at the long established judicial system of this country—up-rooting alike all that is excellent in the simplicity of ancient, as in the refinements of modern practice.

In the Appendix to the First Volume of the Monthly Record, will be found the Third Report of the Common Law Commissioners, relating to matters of *Pleading and Practice*. The Commissioners come to the conclusion, that in future the only

forms of action should be those of covenant, debt, detinue, dower, ejectment, (under the new denomination of Plea of Land,) mandamus, prohibition, quare impedit, replevin, scire facias, trespass, and trespass on the case (including assumpsit and trover).

We are enabled, from an ingenious and able pamphlet with which we have been favoured by Mr. Theobald*, to lay before our readers a concise but ample defence of Special Pleading, as an essential part of judicial science.

“Anciently all special pleadings were delivered by counsel *viâ voce* in court before the Judges. In their origin they seem to have been of the nature of a preliminary discussion, to ascertain what point there was for a jury to try or the Court to adjudicate upon. In the present day they are conducted out of court; not *viâ voce*, but in writing. The order in which they occur is usually the following:—The suitor states his case to some attorney. If a difficult one, the attorney states it to counsel, with the emendations which his experience or knowledge may suggest. If the opinion of counsel is favourable, the attorney then obtains a writ, which is the commencement of the action; and on the defendant's appearance to the writ, counsel, or the attorney himself in common cases, states, in the prescribed forms of pleading, the plaintiff's complaint, claim,

* What is Special Pleading? A Letter to Sir Thomas Denman, Chief Justice of all England, &c. in Answer to this Question: with a Proposal of Emendations in the Forms of Actions. By William Theobald, Esq., of the Inner Temple. London: S. Sweet; Ealingham Wilson.

or cause of action. This formal statement is called the *Declaration*. In every mode of procedure there evidently must be some act corresponding with the declaration. The *Plea* is the defendant's answer. The *Replication* is the plaintiff's reply, which must be of such a nature as not only to answer the plea, but answer it consistently with the declaration; it must support the declaration. The *Rejoinder* answers the replication, and must not only answer it, but answer it by matter consistent with the defence first pleaded. The *Rebutter* answers the rejoinder on the same principles, and so on;—each part of the pleadings being framed according to rules, whose only essential object is to exclude irrelevant matter, and elicit some single question of fact or law, the decision of which would be conclusive in favour of, or against, the claim of the plaintiff. This object considered, special pleading is evidently a process performed in some way or other, at one time or another, in every judiciary.

Mr. Theobald then gives an illustration in an action between a landlord and tenant—turning on the question whether the tenancy had been determined; and proceeds to remark as follows:

“In this instance the point to be tried was not arrived at until after several pleadings. This has been made the ground of an objection to special pleading. But it seems to be less a fault of special pleading than of the discretion in the management of the case, which must be allowed to the parties or their legal advisers, under any mode of procedure. If the tenancy subsisted as the rebutter affirmed, then the declaration was true; the trespasses were committed in the plaintiff's close, and he was entitled to compensation. Even in a Court in which the parties are examined *viva voce*, more than was contained in the declaration could not be required of the plaintiff in the first instance. Neither in the first instance could more than was alleged in the plea be required of the defendant, if he believed the tenancy to have been determined; for, if it was determined, then, *prima facie*, he had all the rights as against the plaintiff of an owner, and why should he say more in answer to the plaintiff than that he was owner? And hence, an objection on account of the procrastination of the point ultimately put in issue, is not so much an objection to pleading as to trial by jury, for which special pleading, in contradistinction to the statement of the case and answer at large, is generally admitted to be necessary, to prevent confusion in the minds of the jury.”

Other cases are then put by way of elucidating the nature of Special Pleading. Thus:

“If infancy is pleaded, the plaintiff is required by the rules of pleading, either to deny the infancy of the defendant when the debt was contracted, or to admit it, and state some

fact from which it would appear that, notwithstanding the infancy, the defendant was liable at the time of the action. Thus, if the debt was for goods,—and whether it was so would appear by the declaration,—the plaintiff might reply either that the goods were necessities, or that the defendant, after he came of age, had promised the plaintiff to pay for them. Either of these facts would, in point of law, make the defendant liable, unless some other fact not yet disclosed neutralized them.

“So, if the defendant pleads his bankruptcy and certificate, the plaintiff must either deny the matter of the plea or reply some new fact, as, for instance, that the defendant had promised to pay the debt since the bankruptcy; and to the replication the defendant in like manner would be obliged to oppose either a denial, or some new fact, as the case might be; for instance—that since the promise, he had obtained an adjudication of discharge as an insolvent debtor. To do neither would be a default, which would clearly entitle the plaintiff to judgment, and he would obtain judgment accordingly.

“In like manner, if the defence on the plea is the statute of limitations, the subsequent pleadings may either present an issue on the question, whether the debt accrued within the statutory period, or, by a further analysis of the case, present some other simplified question.”

Mr. Theobald next proceeds to contrast this process with the proceedings of judiciary in which there is no Special Pleading; and we think the impartial reader, on comparing the advantages and disadvantages of Special Pleading, will have no difficulty in deciding in favor at least of a modified adherence to this condemned, because misunderstood, system.

“In breathless haste the defendant sends forth a volley of defences, mingling with them assertions of the most irrelevant nature. His mode of doing it, and the connected circumstances, tinge the mind of the Judge sometimes with dislikes, sometimes with preferences. Specific allegations of matter of fact cease to have exclusive importance, and their weight, in point of law, is scarcely perceived, much less estimated. The Court, instead of being a court of law, becomes a court of conscience, if it decides immediately. Or, suppose all that is said by the parties and witnesses to be taken down in writing, and the Court to adjourn to form its decision, what takes place in the interval? Evidently, the first task performed by the Court must be that performed by special pleading. The various points arising upon the evidence have to be selected and marshalled. The facts reciprocally admitted must be separately distinguished from those which are disputed. According to their relative bearings, they must be opposed to or ranged alongside one another. The numerous circumstances singly amounting to nothing must be carefully strung together according

to their class, and each examined with microscopic eye to see that no material defect lurks in any one of them to vitiate the assortment and inference. The irrelevant must be rejected. In the end the Judge extracts some one or more facts to form the ground of his judgment. Suppose him now to record a minute of the case; the best mode in which he could do this would only show that he had been performing a process identical with that of special pleading. He would say, The plaintiff demanded fifty pounds for goods sold and delivered. The sale price and delivery were proved. The defendant objected to the demand, that at the time of the sale he was an infant. This objection was established by the evidence. But the plaintiff said, the goods were necessary for the maintenance and degree of the defendant. They were proved to be necessities. The defendant said, he had been a bankrupt and had obtained his certificate. This was proved on the part of the defendant. The plaintiff said, that since the bankruptcy the defendant had promised to pay the debt in question. The defendant denied this. It was not proved that he had promised.—Judgment for the defendant.”

The following general observations are then forcibly urged by the author:

“The case then, it is clear, turned in the end on a single question. The evidence given was not only on this, but also on four other questions. And why on these? For want of some process *before* trial, analogous to that employed by the Judge after trial; for want of the preliminary investigation of special pleading. And supposing the evidence on each question to have been as complete as if they had formed single issues predetermined, the chief sources of expense and trouble were increased at the trial five-fold. Can it be doubted that on an average the accidents tending to mis-decision and mis-trial would be increased in a similar proportion? Taught by experience the inconclusiveness in every case of a great portion of the evidence given, the Judge could not but be often impatient. Without a clue to the decisive point, he would feel himself at every turn of the case as in a labyrinth. Under the fair pretext of official sagacity, he would endeavour to diminish the evil by cutting off this or that line of evidence. Suppose him to ask the parties beforehand what facts they principally intended to rely upon, or to obtain a statement from each before any evidence was given by either of them. To discriminate upon their answer the material from the immaterial, or to raise an issue upon it, would be but a rude approximation to special pleading, at once illogical in its form, and in its results much less certain. And what if the Judge, yielding to the temptation constantly offered by the form of the litigation, assumed to act paternally, on the principles of a domestic forum? The predetermination of the issue by special pleading would have effectually guarded him against such a departure from his proper functions.

“Some there are, I know, who would delegate to the Judge these powers of conciliation; on this subject I differ from them. Between the *puterfamilias* and the Judge there is scarcely any point of analogy with reference to practical purposes, excepting in the supremacy of their respective authorities within their jurisdiction. The former knows intimately all the parties. To the offender may he not properly, and does he not usually say, “It was very wrong, but you were yesterday in fault, and he not; you must for this time forgive, and both learn to forgive one another.” Or, “Never mind this once; let him keep it, and you take this instead.” The parent takes to himself the burden of the wrong, *rather than do justice*. He thinks, and justly, that feelings are concerned, rather than principles or *interests*;—before the Judge, on the contrary, *not feelings*, but principles and interests. To treat men as brothers or as members of the same household is impracticable, unless they either are so, or are in the habit of so treating one another.”

Mr. Theobald next points out another advantage of Special Pleading:

“By eliciting the facts beforehand, if any of those alleged by the one party are deemed by the other legally insufficient, it affords the opportunity of taking the opinion of the Court upon them, without incurring the expense of a trial. Suppose, for instance, the case to be the one stated above, and found ultimately to depend on whether the defendant had since his bankruptcy promised payment. If in point of law a promise to pay a debt barred by bankruptcy did not entitle the creditor to an action, but raised only a moral obligation, the special pleader would object to the sufficiency of the supposition of the defendant's having promised as an answer to his last previous pleading, or, which is the same thing, to its sufficiency as a ground for maintaining the action. He would demur for this objection. From the objection, if valid, it would follow, that the plaintiff had not a right of action. And in that case, of what use would be a trial? Special pleading, therefore, besides economizing the trial, saves the parties from any unnecessary trial.”

Some instances are then given of the inconvenience of the present practice in mercantile cases, where, under the plea of general issue, evidence is allowed to be given which the plaintiff could by no reasonable means anticipate.

“Thus, if the action is on a marine policy, he must first prove the policy. Perhaps the stamp, through an inadvertence not more the fault of himself than of the defendant, is insufficient. The defendant in that case succeeds, though his defence was not with a view to this objection. Next the policy is read, to ascertain whether it accords with the declaration. By some clerical error perhaps it has been incorrectly stated in the declaration. The variance until lately was fatal to the

action. This is a second advantage not anticipated by the defendant. Next perhaps the policy contains special terms, which, if framed by the parties themselves, may be, to the apprehension of lawyers, of uncertain meaning. The defendant, upon this uncertainty, raises another collateral objection. All these,—and they are but instances,—there are many others like them,—are so many chances, perfectly extraneous to the defence originally intended, and to any defence recognised as respectable among merchants; and I need hardly add, they would not so surely have come in the defendant's way, had the case undergone the analysis of special pleading: for, suppose the dispute in fact to have been whether the loss was by barratry or by some other cause confessed on both sides not to be within the policy; such a dispute would imply the absence of all question as to the validity of the policy; and special pleading, with a few accessory aids, might be so conducted as to elicit a final admission of the policy, and render unnecessary any evidence except as to the barratry."

Through the remainder of his pamphlet, Mr. Theobald considers and discusses the defects and abuses in the application of Special Pleading, but into the details of which it is not our present purpose to enter. We therefore refer our readers to the work itself, which we consider a very valuable contribution to the important subject on which it is written.

ABSTRACT OF THE REPORT OF THE SELECT COMMITTEE ON SECONDARY PUNISHMENTS.

1. The Committee, after a formal introduction, commence their Report with observing, that a House of Correction should offer the prospect of diminishing the amount of crime, either by the severity of its discipline, or by reforming the morals of those committed to it. In both these essential particulars many of the prisons are deficient: they scarcely hold out any terrors to the criminal, while, from the inefficiency of the control exercised over him, and the impossibility of separating the most hardened malefactor from those who, for the first time, find themselves the inmates of a gaol, they tend to demoralize rather than to correct, all who are admitted within their walls.

Imprisonment in a gaol is not considered by hardened offenders a severe punishment, and the effect produced on the morals of the prisoners is far more prejudicial to society than any laxity of discipline, tending merely to their comfort. It is almost impossible for any but the most degraded criminal to be confined, even for a short period, without injury to his morals. Even the most virtuously constituted mind would find it difficult to escape contamination. In Newgate and the House of Correction, the prisoners sleep in rooms contain-

ing from fifteen to twenty. During the day they are associated in the yards, in numbers from sixty to one hundred and thirty. In gaols in different parts of the kingdom, no restraint is attempted. They are mixed together, the old and the young—the most hardened and most inexperienced,—the prostitute, the modest woman, and the young girl.

The Committee are of opinion that none but a *moral classification* can be effectual; but they fear that the difficulties which stand in the way are nearly insurmountable.

They however recommend that prisoners, when committed for trial, should be placed in light solitary sleeping cells, provided with employment, where practicable, and furnished with moral and religious books; that although they should be strictly confined to their cells at night, and while at their meals, they should be allowed to receive visits from their friends, under proper superintendence, and also to walk in the airing grounds of the prison, in company with the other *untried prisoners*, under the constant and vigilant superintendence of a turnkey.

The Committee are aware that a proposal to inflict on prisoners, *before trial*, any restraint beyond what may be necessary for their safe custody, is likely to shock the opinions of many who may be disposed to consider it in the light of punishment inflicted without delinquency; but the Committee are of opinion that such a separation of prisoners should be regarded rather as a boon than a punishment. To those not hardened in crime, the association with the reckless malefactor, and the horrors of such companionship, must be an infliction tenfold more severe than the partial seclusion to which it is proposed to subject them.

If the Committee felt any difficulty in recommending solitary confinement for *untried prisoners*, they have none whatever in urging its adoption on those SENTENCED TO IMPRISONMENT *with, or without, hard labour*. As to the Tread-wheel, in some prisons it is carried to an excessive and cruel degree of severity, whilst in others it is a punishment only in name. There is no uniformity as to the number of hours, the height of the steps of the wheel, or the rapidity of its rotation; so that in some prisons the punishment is nearly three times as severe as in others. In Bedford gaol the labour is equal to an ascent of 5000 feet in summer, and 3600 in winter. At Knutsford it is 14,000 feet in summer, and 9,800 in winter. So as to *diet*: in Hereford gaol, the weekly cost of feeding a prisoner is 3s. 7 d.; at Preston, 1s. 11½ d.

Under these circumstances, the Committee are of opinion, that hard labour *alone* is not sufficient for the correction of crime, and that hard labour, with the *addition of solitary confinement*, should be substituted. But they recommend it to be of a very mitigated description, as solitary confinement, strictly enforced for a length of time, is attended with the worst consequences, and instances have occurred of suicide to escape its horrors.

In America the prisoners sleep and take

their meals in solitary cells, but work in company; yet not a word is allowed to be exchanged, and any transgression of the rule is punished with blows. But as a discretionary power to this effect would be objectionable in this country, the Committee recommend the following course.

That the prisoners be confined in light solitary cells, except while at hard labour; that in proceeding to and returning from exercise, they be marched in single files, and strict care taken to prevent even a whisper passing from one prisoner to another:—that to prevent conversation while at exercise, the wheel be divided into compartments, with partitions to contain one person in each, and that no more prisoners be taken out for exercise than may be sufficient to fill the wheel:—that no prisoner be allowed to receive visits from his friends, or to hold any communication with them, even by letter, except in special cases, and with the permission of the visiting magistrate;—that when shut up in their cells, the strictest silence be enforced, and for that purpose a turnkey be constantly perambulating the galleries of the prison; that every cell be furnished with books of a moral and religious character, and such employment provided for the prisoners, when not at hard labour, as may tend to encourage habits of industry, and repay a portion of the expense incurred in their maintenance.

The Committee entertain a sanguine expectation that solitude will subdue the spirit of the hardened offender—that separation from his old companions in crime will induce him to reflect on the sinfulness of his career—and that even in cases where better feelings are not excited, the severity of the punishment will be found sufficient to operate as a check to future misconduct.

Inspectors of Prisons are recommended to be appointed, in addition to Visiting Magistrates. These officers should visit all the prisons, at least once a year, and report to the Secretary of the Home Department, for the information of Parliament. Measures should be taken for the conversion of the large sleeping and day rooms into separate cells, and the addition of a sufficient number of new solitary cells, to insure the separation of prisoners before and after trial.

The necessary funds, it is proposed, should be provided at the public cost; and it is estimated that the present expense will be diminished, as by increasing the severity of the punishment, its duration may be shortened.

It is also recommended that a summary power be granted to magistrates in petty sessions, to sentence persons guilty of minor felonies to solitary confinement, with a bread and water diet, in a light cell for twenty-one days.

The more frequent delivery of gaols is also urged as an object of great importance—the speedy as well as certain infliction of punishment being the best preventive of crime.

2. The Report next proceeds to the mode of punishment and correction pursued at the *Penitentiary*. The order and cleanliness which

characterize this establishment, are much commended. But still the Committee recommend that more effectual means should be adopted to prevent conversation between prisoners while in their cells. The indulgence of receiving letters they also advise to be discontinued, as well as the practice of granting gratuities on their discharge; and the latter they consider the less called for, as each convict receives, when liberated, one-eighth of his earnings.

The *Penitentiary* having been established with a view to *reformation*, as well as punishment, the Committee urge great care to be taken in the selection of the convicts. None, they say, should be admitted, of whose reformation reasonable hopes may not be entertained—who have been convicted of a second offence—sentenced to more than seven years' transportation—or whom it is intended to send to the Penal Colonies. And they think a confinement of from one to three years, with a strict enforcement of the system recommended, offers the best prospect of effecting the objects of the establishment.

As to *females*, the Report recommends that, when sentenced to transportation, they should, in the first instance, undergo the ordeal of the *Penitentiary*.

3. The next subject of consideration, contained in the Report, is the system pursued with convicts on board *the Hulks*. This the Committee are under the necessity of unqualifiedly condemning. It is at variance with their main principles—those of a separation of criminals, and a severity of punishment sufficient to make it an object of terror to the evil-doer. All that is stated of the miserable effects of the association of criminals in the prisons on shore, the prophaneness, the vice, the demoralization that are its inevitable consequences, applies in its fullest extent in the case now under consideration. The convicts, after being shut up for the night, are allowed to have lights between the decks, in some ships as late as ten o'clock. They obtain musical instruments:—flash songs, dancing, fighting, and gaming take place. The old offenders are in the habit of robbing the new comers. Newspapers and improper books are introduced. A communication is kept up with the old associates on shore, and occasionally spirits are obtained. Though these practices are against the rules of the establishment, they are not suppressed. The convicts are also allowed to receive the visits of their friends, and during the time they stay, are excused from work. Too much money is placed at the disposal of the convicts, as well during their confinement as on their liberation. The number of hours during which they work, deducting the time of mustering, is less than nine hours in summer, and six and a half in winter. This is not much more than necessary for health and exercise.

The consequence of all these circumstances is, that confinement on board the *Hulks* fails to excite a proper feeling of terror. "Life in the *Hulks* is considered a pretty jolly life;" and if a criminal can conquer the sense of shame, he

is in a better situation than a large portion of the working classes.

The Committee, however, do not at present recommend the abolition of this establishment, because the punishment of mere transportation to New South Wales is not sufficient to deter from the commission of crime. The reforms they recommend are as follow :—

The separation of the prisoners by night is essential as a first step towards improvement ; and as this cannot be effected on board, places must be provided on shore, where order and silence should be strictly enforced, the visits of friends and all communication, even by letter, prohibited. Health should be promoted, but all indulgence withheld. The earnings of the convicts should be carried to the public account. None should be sent to the Hulks who are intended to remain in the country, and no reserve, therefore, need be made for their discharge. The hours of labor should be prolonged, so as to make the work of a convict *at least* equal to that of a free laborer. The convict establishment should be an intermediate station, between the Gaol and the Penal Colonies. The inadequacy of simple transportation being apparent, the Committee are of opinion that no male convict should be exempted from the previous severe punishment of hard labor : thus enforcing habits of sobriety and industry, and preparing the convicts for the service of settlers in the Colonies.

4. *Of the Penal Colonies.*—Transportation is considered by the Committee as a valuable ingredient in secondary punishment. Unless, they say, there existed some such mode of disposing of criminals, whose offences do not merit the penalty of death, but whose morals are so depraved that their reformation can hardly be expected, no alternative would remain between perpetual imprisonment, and the constant infusion into society of malefactors, who, after the term of their punishment had arrived, would again be thrown as outcasts on the world, without friends, without character, and without the means of gaining an honest livelihood.

The effect of a sentence of transportation on culprits is thus described. Agricultural labourers, with families, dread it extremely ; while to single men, mechanics, who are sure of receiving high wages, and generally all who feel a desire of change and a vague expectation of pushing their fortunes, it holds out no terrors whatever. The accounts sent home are so favorable as to the comfort of the convicts, that transportation is considered rather an advantage than a punishment.

The situation of the convict assigned to a settler, is, in many respects, preferable to that of the agricultural labourer of this country. His food is more abundant. His clothing better ; and he has the advantage of a fine climate, with the certainty, if he conducts himself with propriety, of being virtually free in a few years, by obtaining a ticket of leave. Mechanics are still more advantageously situated. The demand for their labor is so great, and its re-

muneration so high, as to render it easy for them to purchase indulgences of the overseers (themselves convicts) ; and their masters find it convenient to allow them privileges wholly inconsistent with a state of punishment, with a view to obtain the full value of their labor. Thus they are under little restraint, and make no moral improvement.

Tickets of leave are given at the end of four years, to convicts transported for seven years ; at the end of six years, if transported for fourteen ; and of eight, if transported for life. Though confined to a particular district, the possessor of a ticket of leave is allowed to work on his own account, and the high rate of wages furnishes him with the means of acquiring capital, with which he is enabled, at the expiration of his sentence, to set up in business.

The “Gentlemen Convicts,” consisting of men of education, who have filled confidential situations as clerks or agents in this country, are the most difficult to manage. They have been allowed to act as clerks and tutors, but many remain on the hands of Government. The Committee recommend that the mistaken humanity as to those persons should be corrected, and the convicts sent to the dock yards at home, to acquire the skill and habits of labourers before they are transported to the colonies. In the United States, criminals of this description are sometimes sentenced to imprisonment for life ; but the Committee think that such a punishment could not be carried into effect here. The real or apparent reformation of the prisoner would, inevitably, so far prevail on the feelings of those to whom he had access, so many appeals would be made to persons in authority by his friends, that the consequence would probably be his release after a few years’ captivity. This might reform him, but would not operate as an example ; but the horrors of a lengthened and degrading servitude, would prove to criminals of this description little less severe than death itself. The objection urged against the employment of such persons from their incapacity for hard labor, does not appear to be well-founded ; and the Committee are persuaded from the evidence, that an able-bodied man, however unused to hard labor, may easily be trained to it, and become a useful servant to the settlers in New South Wales.

With respect to the general treatment of convicts in the penal colonies, the Committee were desirous of ascertaining by what means it could be made consistent with its professed object. Some of the witnesses thought that transportation might be rendered an object of greater terror if the convicts on their first arrival in the colony were subjected to a certain period of hard labor in the road gangs. But although such a punishment would be severely felt, its tendency to render the criminal more depraved, if possible, and more reckless of consequences, and the great expense from the difficulty of finding profitable employment for so many as must be added to the government gangs, are objections to the adoption of such a plan.

The employment of convicts by the Government, except for offences committed in the colony, appears to be of very doubtful policy. It necessarily congregates them in large numbers, the evil consequences of which have already been adverted to, and is inconsistent with economy, as the public works on which they have usually been employed, can be executed at a cheaper rate by contract. But the practice of allowing any portion of the Government convicts to sleep out of barracks, and to provide themselves with lodgings in the town, with leave to work on their own account, appears so incompatible with any well-regulated system of restraint, as to require the immediate attention of the colonial department.

The Committee therefore recommend, that all convicts in the service of the Government, be strictly confined in their barracks at night in separate cells; and that the barracks be for that purpose altered. That all male convicts, on their arrival from the mother country, be assigned to settlers in the rural districts, and that none be allowed to enter the service of those living in the large towns, until after several years residence in the colony.

That none but persons of respectability be allowed to have convicts in their service; the consequences of allowing settlers of profligate and abandoned characters to have convict servants being highly objectionable.

That no convict be assigned to a settler until he shall have paid or given security for the expence incurred in the conveyance of such convict from the mother country.

That the service in the country necessary to the obtaining tickets of leave, be not shortened in consequence of any punishment inflicted previously to transportation.

It was with a knowledge of the difficulty of providing adequate punishment in the colony, that the Committee recommend an improved system of convict labor at the Hulks. The increased severity of punishment previous to transportation, they are of opinion, will render it unnecessary, on their arrival in the colonies, to resort to any measures of coercion beyond what may be required to insure a wholesome restraint, and a denial of indulgences inconsistent with a state of punishment.

Transportation will thus be clothed, the Committee trust, with sufficient terrors to deter from the commission of crime, many whom no virtuous motives will influence; who will learn that whatever advantages may eventually be acquired by banishment from the land of their birth, can be attained only by the painful endurance of a severe and protracted servitude.

The Committee, in concluding, observe, that if it is a principle of our criminal jurisprudence that the guilty should escape rather than the innocent suffer, it appears to be equally a principle in the infliction of punishment, that every regulation connected with it, from the first committal of a criminal to gaol, to the termination of his sentence, should be characterized rather by an anxious regard for the health and convenience of the criminal, than

by any thing which might, even by implication, appear to bear on him with undue severity. It cannot, then, be deemed surprising, that in an over-peopled country, where a great portion of the community must necessarily be exposed to considerable privation; and where, consequently, the inducement to the commission of crime, under any circumstances, must be great, those who have been brought up with little attention to their moral improvement, should, when urged by the pressure of want, yield to the temptation. On the one hand they trust to the uncertainty of the law and the chances of impunity; while they know that the worst that can befall them will be a change to a condition often scarcely inferior to that in which they were before.

The Committee therefore recommend the adoption of a system which to many may appear, at first sight, characterized by unnecessary severity; but they feel persuaded that a few years' experience will shew that it is attended, not only with increased security to the public, but with advantage to the criminals themselves.

For the present, the Committee recommend that an immediate survey be made of the Prison at Dartmoor, with a view to its being adapted to the reception of convicts. They also suggest the propriety of a return of all the prisons through the kingdom, stating the alterations and additions necessary to provide for the complete separation of the prisoners.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1831—1832.

No. XII.

REMEDIES AGAINST THE HUNDRED. 2 & 3 W. 4. c. 72.

THE Laws relating to remedies against the Hundred, were consolidated and amended by 7 & 8 Geo. 4, c. 31, and provision was made, as to machinery employed in *manufactures*; but no compensation was provided for pulling down or destroying *threshing machines*.

The 2 & 3 W. 4, c. 72, which received the royal assent on the 12th August last, extends the remedy to threshing machines, whether fixed or moveable; and also for any damage done to any erection or fixture belonging thereto.

BILLS ON EXCHANGE. 2 & 3 W. 4. c. 98.

Bills payable at places, not the residence of the drawees, need not be presented at

their residence; and if not accepted on presentment, may be protested for non-payment, without further presentment, unless the amount be paid to the holder.

LUNATICS. 2 & 3 W. 4. c. 107.

This Act, which was passed on the 11th October, consolidates the previous statutes. The Lord Chancellor is authorised to appoint from fifteen to twenty commissioners for London, Middlesex, and Southwark. Four or five are to be physicians, and two are to be barristers. The commissioners are to grant licences of houses for insane persons. They are to meet four times in every year; and five commissioners may assemble at any time.

In the other parts of England, licences are to be granted by the justices at quarter-sessions, and they are to appoint visitors.

Notice of the application for a licence must be given fourteen days before the

meeting. The licence must be renewed annually. If the commissioners refuse a licence, notice may be given to the Secretary of State for the Home Department.

No person is to be received, without an order and medical certificate. If there are 100 patients, there must be a resident medical man; and if less, they are to be visited by medical men.

The houses are to be inspected by the commissioners four times a year, and by visitors three times a year. Concealing persons is deemed a misdemeanor. The commissioners may set at liberty persons improperly confined, unless found insane under a commission, or by order of the Secretary of State.

An annual report is to be made to the Lord Chancellor, who, as well as the Secretary of State, may order visitations by the metropolitan commissioners; and witnesses may be summoned in any matters relating to the execution of the Act.

PARLIAMENTARY RETURNS.

MASTERS IN CHANCERY.

(1.)

Return of the Names of the Masters in Chancery who have Retired upon Superannuation Allowance since November 1830 to the present time; their Ages at the period of their Retirement, and the Amount of Superannuation Allowance granted, and the Fund from which granted.

Names.	When Appointed.	When Retired.	Age.	Superannuation Allowance.	The Fund from which paid.	The Length of Service.
Francis Paul Stratford, Esq.	18th March 1803	4th March 1831	76	£1,500	Suitor's Fund	28 years, wanting 14 days.
John Springett Harvey, Esq.	13th Jan. 1804	8th June 1831	77	1,500	- ditto -	27 years and upwards.
Samuel Compton Cox, Esq.	18th July 1804	3d March 1831	74	1,500	- ditto -	26 years and upwards.
James Stephen, Esq.	20th Feb. 1811	29th March 1831	72	1,500	- ditto -	20 years and upwards.

The Names and Ages of Persons appointed to be Masters in Chancery, since November 1830.

Names.	When Appointed.	Age.
Henry Martin, Esq.	4th March - - 1831	65 years and upwards.
George Boone Roupell, Esq.	4th March - - 1831	67 years.
William Brougham, Esq.	29th March - - 1831	34 years.
William George Adam, Esq.	9th June - - - 1831	49 years.

(2.)

Return of the Persons appointed Masters in Chancery, from the 1st day of January 1815 to the 1st day of January 1820; their Ages at the time of Appointment.

Names.	Date of Appointment.	Age at the time of Appointment.
John Jekyll, Esq. - - - -	22d June - - 1815	- - 62 years.
William Courtenay, Esq. - - -	30th July - - 1817	- - 40 years.

(3.)

Return of the Persons appointed Masters in Chancery since the 1st day of January 1820, with their Ages at the time of their Appointment.

Names.	Date of Appointment.	Age at the time of Appointment.
John Edmund Dowdeswell, Esq. -	8th day of February 1820	- - 47 years.
Francis Cross, Esq. - - - -	12th day of July - 1821	- - 40 years.
James Trower, Esq. - - - -	3d day of March - 1823	- - 67 years.
William Wingfield, Esq. - - -	16th day of February 1824	- - 52 years.
James William Farrer, Esq. - -	9th day of March - 1824	- - -
Sir Giffin Wilson, Knight - - -	23d day of March - 1826	- - 59 years.
Right Honourable Lord Henley -	23d day of March - 1826	- - 36 years.
Henry Martin, Esq. - - - -	4th day of March - 1831	- - 65 years.
George Boone Roupell, Esq. - -	4th day of March - 1831	- - 67 years.
William Brougham, Esq. - - -	29th day of March 1831	- - 34 years.
William George Adam, Esq. - -	9th day of June - 1831	- - 49 years.

(4.)

Return of the Number of Reports sent out of the Office of each Master since the 1st of January 1831, distinguishing the Changes in each Office during the period, and the Date of each Change.

John Edmund Dowdeswell, Esq.	387 Reports and Certificates.	No change in this office since January 1831.
Francis Cross, Esq. - - - -	352 Ditto - - - -	- - Ditto.
James Trower, Esq. - - - -	341 Ditto - - - -	- - Ditto.
William Wingfield, Esq. - -	441 Ditto - - - -	- - Ditto.
James William Farrer, Esq. -	373 Ditto - - - -	- - Ditto.
Sir Giffin Wilson, Knight - -	402 Ditto - - - -	- - Ditto.
The Right Hon. Lord Henley -	426 Ditto - - - -	- - Ditto.
Henry Martin, Esq. - - - -	256 Ditto - - - -	Succeeded Francis Paul Stratford, Esq. 4th March, 1831.
Francis Paul Stratford, Esq. -	101 Ditto - - - -	- - -
George Boone Roupell, Esq. -	286 Ditto - - - -	Succeeded Samuel Compton Cox, Esq. 4th March, 1831.
Samuel Compton Cox, Esq. - -	90 Ditto - - - -	- - -
William Brougham, Esq. - -	188 Ditto - - - -	Succeeded James Stephen, Esq. 29th March 1831.
James Stephen, Esq. - - - -	167 Ditto - - - -	- - -
William George Adam, Esq. -	Succeeded James Springett Harvey, Esq. as Accountant-General, 9th June 1831.	- - -

W. T. SMITH,
Clerk of the Public Office.

(5.)

PUBLIC OFFICE, CHANCERY.

Copy of the Minute left in the Public Office in Chancery, respecting the Retiring Salaries of Masters ROUPELL and MARTIN.

10th March 1831

WHEREAS Henry Martin and George Boone Roupell, Esquires, have been appointed Masters in Chancery: And whereas there may arise a necessity for their Retiring before serving the full

term of Twenty Years, through some permanent bodily Infirmity; *This is to Certify*, That they have each accepted their said Offices upon express condition, that if they should Resign before the full term of Twenty Years, they shall make no claim to Retiring Pension.

BROUGHAM, C.

BANKRUPTCY COURT AND OFFICERS.—THE SECRETARY OF BANKRUPTS' RETURN.

In obedience to the order of the House of Commons of the 4th day of April last, directing "a return of the duties performed by the present and former secretaries of bankrupts, before the passing of the act constituting a court of bankruptcy, and of the number of hours in each day in which they were respectively engaged in the public duties of the office; and also, a return of the number of clerks and other officers employed in the secretary's office before and since the passing of the act, and of the comparative attendance of the secretary at his office before and since the passing of the act; and of the number and names of other offices or appointments held by the present or former secretaries while being secretary of bankrupts, or consequently to their quitting that office, to which any of them may have been appointed by the Lord Chancellor; and of the hours of attendance of the late deputy secretary of bankrupts on the duties of his office, and a specification of what such duties were, and of the number of bankrupt petitions heard in Court by the Lord Chancellor and Vice-Chancellor respectively, during the years 1829, 1830, and 1831."

I communicated such order to Mr. Pensam and Mr. Barlow, my two immediate predecessors in the office of secretary of bankrupts, and to Mr. Barber, who acted as deputy secretary for several years, and to the time the act constituting a court in bankruptcy came into operation, and I subjoin their several answers made to such my communications.

In answer to a former order, I have specified the duties performed by me as secretary of bankrupts, since the before-mentioned act came into operation, and I cannot better explain what were my duties before the passing of that act, than by referring to the returns of Mr. Pensam and Mr. Barlow. I performed all the duties so specified by them, except that I cannot say, like Mr. Pensam, that I have attended the Lord Chancellor in person daily, or like Mr. Barlow, that I was in Court daily at the sitting and rising of the Court; but I have always been in attendance on his Lordship in person several days in each week, some times twice and thrice a day, frequently at an early hour in the morning, before his Lordship went into Court, and oftentimes from an early hour in the evening till past midnight. I did not attend daily in Court, because I found it had not been the practice of any of my predecessors, except Mr. Barlow, so to attend; and because such attendance did not appear to me to be requisite, many days passing without any business in bankruptcy being transacted in Court, no business, requiring special directions, being brought on without notice, and such directions as were given being taken according to established custom, and in the same manner as is done in all the other departments of the Court by the officer of the day, whose

duty it may have been to be in attendance. I do not find the duties of the secretary diminished by the establishment of the new court the business carried to that Court from his office being, with the exception of the allowance of bankrupt's certificates, that only which resulted from the attendance on the Vice-Chancellor, and consequent on orders pronounced by his Honor, and the returns show that those duties were performed by the deputy secretary, whose office is abolished by the late act. The responsibility and the necessity for the personal attendance of the secretary at his office are increased rather than diminished by that act, inasmuch as he has lost the advantage which he derived from the general superintendence of the business of that office which was exercised by the deputy secretary; and I find the references made to myself at the office more frequent since the act than before its passing. I was appointed secretary in the place of Mr. Barlow by the present Lord Chancellor, on his Lordship taking the Great Seal in November 1830; but I do not hold nor have held any other office or appointment under his Lordship.

Before the passing of the act referred to, there were employed in the office, besides the secretary and deputy secretary, four clerks or assistants and a messenger.

The office of deputy secretary no longer exists, and the Lord Chancellor has been pleased to appoint Mr. Barber to be one of the registrars of the new Court of Bankruptcy, in which court two other of the secretary's former clerks or assistants also now hold offices. Two of the former clerks remain at the secretary's office, having greatly-diminished salaries provided for them by the act, and besides a messenger, other assistance is daily necessary, which is paid for out of the fees directed to be received by the secretary under the first schedule to the act.

The number of bankrupt petitions heard by the Lord Chancellor and Vice-Chancellor respectively during the years 1829, 1830, and 1831, were as follows:

1829 . .	Lord Chancellor . .	134
	Vice-Chancellor . .	523
		— 657
1830 . .	Lord Chancellor . .	102
	Vice-Chancellor . .	582
		— 684
1831 . .	Lord Chancellor . .	121
	Vice-Chancellor . .	541
		— 662

WM. VIZARD.

7 May, 1832. Secretary of Bankrupts.

In answer to the requisition communicated to me, I have to state, that I was secretary of bankrupts to the Lord Chancellor from April 1815 till his Lordship's resignation in 1827, and also of commissions of peace, &c.

I attended his Lordship in person daily, except on Sundays, and when his Lordship was absent from London during the autumn vacation, and generally at some time of the day at the office a longer or shorter time, as business there required my presence for the performance, or superintendence or direction of it, but not for any particular times or hours; and not unfrequently when petitions were in course of hearing, or specially appointed or expected to be brought on, my attendance has been required and given for seven, eight, or more hours in the day, between the court and the office.

The assistants and clerks employed in the business of the office while I was secretary, were, a deputy, who attended the Vice-Chancellor, and to the business passing before him; one assistant personally to the secretary; three clerks at the desk, for the current business, including the books and accounts; and a messenger; and generally two or three, and sometimes more, writing stationers close at hand, solely employed for expediting with the greatest dispatch the copying and other business in which they could be properly employed.

I was at the same time (and before I was secretary) a commissioner of bankrupts, and cursitor for the counties of Gloucester and Cambridge, being an office for life, of small emolument, and not requiring my attendance in person.

The duties of the secretary of bankrupts, I considered, were personally to attend the Lord Chancellor, not only in Court, and on all public occasions of business and state, in rotation with his Lordship's other secretaries, but almost daily, to procure the signature of the necessary documents and authorities for all the proceedings of the department, or at least to be in place to explain or take directions on all special matters, which were of frequent occurrence; and by himself and assistants, to strike all dockets for commissions; receiving, examining, filing, and keeping the necessary documents, called the docket papers, for the issuing of commissions thereon; to receive, file, and keep the bond entered into by the petitioning creditor to the Lord Chancellor previously to the issuing of any commission; to examine the same, and see that it be properly executed and attested; to write on the petition the fiat for the Lord Chancellor's signature, and to lay the same before him; to enter in a book alphabetically the name of the bankrupt, his description and residence, the name of the solicitor suing out the commission, the date of the docket and of the commission, in a book open to be searched by all persons; also to receive, examine, file, and keep the affidavits necessary for the issuing of writs of supersedeas, or for renewing or resealing commissions; to draw up and prepare orders thereon for the Lord Chancellor's signature, and to enter the same in a book, open to be searched on application; to receive and examine all certificates of conformity, and the necessary affidavits and powers of attorney relating thereto; to sign warrants authorizing the advertising of

certificates in the Gazette; to state the same for allowance and confirmation by the Lord Chancellor, at the proper time after such advertisement, and to write the proper allocatur, and lay the same before his Lordship for signing, and when allowed, to make an entry thereof in an alphabetical list, for reference; to receive all petitions to the Lord Chancellor in matters of bankruptcy; to write and lay before the Lord Chancellor, for his signature, all orders for hearing, or answers respecting such petitions; to arrange the petitions for reference, and to make lists thereof in order for hearing; to attend in Court at the hearing of such petitions, and to take minutes of the proceedings and orders made by the Lord Chancellor thereon; to make copies of the minutes of such orders when the parties desire it, and ultimately to draw up and settle with the solicitors, on their attending, and to engross the orders upon the proper stamps (when stamps were used), and lay the same before the Lord Chancellor for his signature and to enter the same at length in proper books, with alphabetical references; to keep and file all bonds, affidavits, reports, powers of attorney, and other things proper to be retained in the office, with indexes and ready means of reference thereto, and to make copies thereof when applied for; and generally to all matters arising connected with proceedings in bankruptcy.

17 April, 1832.

J. PENMAN.

In pursuance of a communication made to me, I have to state, that I filled the situation of secretary for commissions of bankrupts, from the 1st of May, 1827, until the middle of November, 1830, and that during that time I held no other office or appointment, and that subsequently to my quitting that office, I have held no other office or appointment, except the situation of a commissioner of bankrupts (since abolished), to which I was appointed by the Lord Chancellor, on his resigning the Great Seal.

The duties discharged, and the business daily transacted at the office of the secretary for commissions of bankrupt are set forth in the Report, p. 121, of the commissioners for inquiring into fees in courts of justice, and laid upon the table of the House of Commons in June, 1816. Having kept no account of the precise number of hours in each day in which I was engaged in the duties of the office, I am unable to state the same. My whole time and attention were, however, occupied in the discharge of the duties of the office, and I found it necessary to relinquish my practice as a barrister at the Chancery Bar. Whenever the Lord Chancellor was sitting, I was present for some considerable time, both at the sitting and the rising of the Court, at both of which times original and pressing matters in bankruptcy were, without previous notice, daily brought before his Lordship; and also present in Court during the whole day and sometimes evening, when appeals and other special matters in bankruptcy were appointed to be heard; and when not so occupied in Court, in taking

minutes of proceedings in bankruptcy, I was employed in receiving his Lordship's instructions, and obtaining his opinion on such bankruptcy matters as from time to time arose, and in attending the hearing of bankrupt petitions by the Vice-Chancellor, when the deputy secretary might be unable to attend; and in assisting in and superintending all the business of the office, and in hearing and settling points in dispute between the solicitors personally attending before me, as to the form, &c. in which the orders pronounced by the Lord Chancellor and by the Vice-Chancellor should be drawn up; and also in hearing and determining all practical questions which frequently arose in the details of bankruptcy business, previously to the parties going to the Court on the subject thereof, should they think fit so to do. I also, in turn with the other secretaries, attended the Lord Chancellor in the House of Lords, and on all occasions of state.

The number of clerks and other officers employed at the office during the above period, besides myself, were, a deputy secretary, three clerks, an assistant clerk, to be instructed in the practical business of the office, and a messenger.

April 30, 1832. FRANCIS BARLOW.

The hours of attendance of the late deputy secretary of bankrupts, at the secretary's office, were daily, Sundays excepted, from ten o'clock in the morning until three o'clock in the afternoon, being the regular office hours, but frequently extended to four and half-past four, with occasional attendance in the evening; but during the sittings in bankruptcy, and more particularly at those periods when the sittings became most heavy, his attendance has been required to the hour of five, or half-past five o'clock, resuming the further discharge of his public duties from the hour of seven till ten and half-past ten o'clock at night.

The duties performed by the late deputy secretary of bankrupts were, (besides his attention to the general business of the secretary's office) occasionally, in the absence of the secretary, to attend the Lord Chancellor in the bankrupt sittings, to take the minutes of the orders pronounced by his Lordship, and wholly to attend the Court of his Honour the Vice-Chancellor during such sittings, performing the like duty, and, with few exceptions, to draw up the minutes of all orders in bankruptcy made in both Courts, whether on motion or petition, to settle the minutes with the parties, and finally to pass the orders.

WILLIAM BARBER,

7 April, 1832.

Late Deputy Secretary of Bankrupts.

REMARKABLE TRIALS. No. XX.

BARON SANQUIRE'S CASE, 1612, FOR MURDER.

Several points of law were raised in this case:—

1. That the accessory could not be tried till the principals were attainted.

2. That a peer of Scotland could have no advantage of his peerage here, but must be tried as an English commoner.

3. That the indictment of the accessory ought to be in the county of Middlesex, where he incited the murderers to commit the fact.

4. That the indictment ought to recite that the principals committed the murder in London, as was the fact.

5. That the King's Bench was the proper court to try the accessory in, as it sat in the county of Middlesex, and was superior to all other courts of Oyer and Terminer; which could not sit in term time, while that court sat.

6. That there need not be fifteen days for the return of the *venire facias*, because the offence was committed in Middlesex, where the court sat; but if the indictment had been found in another county, and removed thither, there ought to have been fifteen days between the *teste* and return.

7. That if the principal was erroneously attainted, either for error in the process, or because the principal, being out of the realm, was outlawed, &c. yet the accessory might be attainted; but then, on the reversal of the attainder of the principal for error, the attainder of the accessory was of course reversed.

The prisoner was indicted as an accessory, before the fact, to the murder of John Turner, a fencing-master.

Baron Sanquire, while playing at foils with John Turner (about five years before the murder), Turner thrust out one of the baron's eyes, with his foil: whereupon the baron, resolving to be revenged, tampered with several assassins, to murder Turner. In 1612, he prevailed on Gilbert Gray, one of his servants, and Robert Carliel, a dependant, to undertake it: but Gray afterwards declining the attempt, Robert Carliel associated himself with one James Irweng; and these two, on the 11th of May, 1612, about seven in the evening, went to a public-house in the Friars, which Turner frequented, as he came from his school; and finding Turner there, they saluted him, and fell into conversation with him; when Carliel, on a sudden, fired a pistol at Turner, and shot him in the breast; and he immediately dropped down dead. After this, Carliel fled to Scotland; Lord Sanquire absconded; but Irweng and Gray were taken, while endeavouring to make their escape; and Gray was afterwards made an evidence against the rest.

At length, Lord Sanquire surrendering himself, and Carliel, the principal assassin, being brought back from Scotland, Carliel and Irweng were tried at the Old Bailey, London; and being convicted of the murder, they were executed in Fleet-street, near the Friars; and Lord Sanquire being afterwards arraigned at the King's Bench bar, as accessory before the fact, confessed the indictment; and was thereupon condemned, and executed in Palace-yard.

ADDRESS FROM THE PRIZEMEN OF
THE FACULTY OF LAW OF THE
UNIVERSITY OF LONDON, TO THE
LORD CHIEF JUSTICE OF ENG-
LAND, AND HIS LORDSHIP'S RE-
PLY.

Dec. 17, 1832.

*To the Right Honorable Sir Thomas Denman,
Knight, Lord Chief Justice of England.*

May it please your Lordship;

We, the undersigned, who have obtained the law prizes awarded in the University of London, from the commencement of that institution to the present time, desire to offer to your Lordship our respectful congratulations on your elevation to the bench.

At the bar and in the senate, your Lordship's career was long conspicuous; it was attended by the general respect and esteem due to your public and private worth; and it has now closed in your advancement to an office, than which none in England is more ancient or more honorable. In common with the profession and the country, we rejoice that your talents, learning, and integrity have found, at length, their due reward. We are, especially, proud to recollect your active and liberal patronage of our university; and we pray that for many years of health and happiness you may reflect new lustre on your eminent station, and continue to be the guardian and promoter of the rights and welfare of your country.

We have the honor to be,

My Lord,

Your Lordship's obliged and
devoted servants,

(Signed) Henry Udall, Inner Temple; Edward Mall, 33, Poultry; John Hubbeck, Inner Temple; J. W. Harden, Inner Temple; R. D. Craig, Lincoln's Inn; Thomas Hare, Inner Temple; J. Parken, New Boswell Court; J. Tatham, Gray's Inn; W. Pattison, Lincoln's Inn New Square; J. A. Johnes, Lincoln's Inn and Chester; Samuel Gale, Lincoln's Inn; James Whiteside, Barrister, Dublin; J. C. Heath, Trinity Hall, Cambridge; Joseph Watson, Newcastle-upon-Tyne; John Lotherington, Inner Temple, and Newcastle-upon-Tyne; Charles Webster, Inner Temple.

*To the Gentlemen who have obtained prizes as
Students for the Law in the University of
London.*

Gentlemen,

I heartily thank you for your congratulation on my attaining the high office, to which His Majesty has been pleased to appoint me. Your just estimate of its dignity and importance is calculated to impress more forcibly a sense of the arduous duties inherent in such a station.

Permit me in my turn, gentlemen, to congratulate you on the early distinction which

your talents and assiduity have acquired; and to remind you at the same time of the responsibility which you have thus brought upon yourselves. It is only by the continuance of such exertions, that you can uphold the character you have gained, involving as it does the credit of your excellent instructor, and the fame of that noble institution, under whose auspices your career has been so happily commenced.

Your academic prizes are the fruits of your industry, zeal, and ability. The rewards of a professional life, as you must be well aware, are greatly at the disposal of fortune, and can only fall to the lot of few. All, however, may secure those far more valuable advantages, without which no others are worth possessing; the improvement of the moral and intellectual faculties; the conscious satisfaction arising from a faithful discharge of duty, and the delightful hope of rendering some service to our country and to mankind.

I have the honor to be, Gentlemen,

Most faithfully, yours,

THOMAS DENMAN.

Russell Square, Dec. 18, 1832.

TERMS AND RETURNS—1833.

HILARY TERM

Continues Twenty-one Days.

Beginning Friday, 11th January.

Ending Thursday, 31st January.

EASTER TERM

Continues Twenty-four Days,

Beginning Monday, 15th April.

Ending Wednesday, 8th May^a.

TRINITY TERM

Continues Twenty-two days.

Beginning Wednesday, 22d May^b.

Ending Wednesday 12th June^c.

MICHAELMAS TERM

Continues Twenty-four Days,

Beginning Saturday, 2d November,

Ending Monday, 25th November.

. The Teste and Return of Writs are regulated by the Uniformity of Process Act,

^a Some of the Almanacks state this to be the 9th.

^b This is stated to be the 23d in some Almanacks.

^c The 13th is stated in some Almanacks.

2 W. 4, c. 39. Every writ issued by authority of this Act shall bear date on the day on which the same shall be issued. § 12. No writ issued by authority of this Act shall be in force for more than four calendar months from the day of the date thereof, including the day of such date. § 10.

QUARTER SESSIONS.

THE Quarter Sessions of the Peace, under 1 W. 4, c. 70, are to be held in the first week after the 28th December, in the first week after the 31st March, in the first week after the 24th June, and in the first week after the 11th October.

BANKRUPTCIES SUPERSEDED.

From Nov. 27, to Dec. 21, 1832, both inclusive.

Anderton, Robert, Salford, Lancaster, Merchant.
Beckensall, John, Oxford Street, Wine Merchant, *rescinded and annulled*.
Christie, Alexander, Sheffield, Engineer and Steam Engine Maker.
Coles, G., High Street, Marylebone, Cheesemonger.
Hamilton, Robert, Fountain Court, Bishopsgate Street, Wine Merchant, *rescinded and annulled*.
Lancashire, John, Draycott Field, Derby, Miller and Flour Dealer, *rescinded and annulled*.
Maud, William, and Robert Andover, Southampton, Brewers.
Wilkinson, Joseph, Eamont Bridge, Westmoreland, Clock and Watch Maker.

BANKRUPTS.

From Nov. 27, to Dec. 21, 1832, both inclusive.

Aynsley, G., North Shields, Northumberland, Grocer.
Meggison, Pringle & Co., King's Road, Bedford Row;
Brockett & Co., Newcastle-upon-Tyne.
Asseriti, Anthony, Bridge Street, Westminster, Auctioneer.
Rogers, Manchester Buildings, Cannon Street, Westminster; *Lackington, Off. Ass.*
Anderson, John, and Joseph Perry, Worcester, Painters & Gilders. *Best, Worcester; Hilliard & Hastings, Gray's Inn.*
Abrahams, Lewis, St. James's Place, Aldgate, Wine Merchant. *Pollock, Basinghall Street; Lackington, Off. Ass.*
Armson, Francis, Welcombe Place, Dorset Square, Builder.
Williams, Alfred Place, Bedford Square; *Clark, Off. Ass.*
Brown, Barnard, Leeds, York, Flax Spinner. *Spence & Deeborough, Size Lane; Scholesfield & Co., Leeds.*
Brice, William Charlbury, Oxford, Glover. *Patten, Hatton Garden; Clark, Off. Ass.*
Brooks, John Augustus, Charlotte Street, Bloomsbury, Wine Merchant. *Robins, Bernard Street, Russell Square.*
Barrett, Albert, York Street, St. James's Square, Wine Merchant. *Belcher, Off. Ass.; Smith & Co., Red Lion Square.*
Brass, Peter William, King Street, Hammersmith, Oil and Colourman. *Gauntlett, Queen Street, Cheapside; Lackington, Off. Ass.*
Bill, Jeremiah Broseley, Salop, Butcher, Grocer & Brewer. *White & Whitmore, Lincoln's Inn; Smith, Walsall, Stafford.*
Burton, Richard, Berkeley Place, Clifton, Gloucester, Victualler. *Harvey, Barnard's Inn; Parker, Bristol.*
Butler, William, Little St. Thomas Apostle, Painter and Glazier. *Hewitt, Tophenhouse Yard.*
Benfield, William, St. Mary at Hill, London, Perfumer. *Hume, Southampton Buildings & Great Surrey Street; Graham, Off. Ass.*
Bowley, James Browning, Great Dover Street, Furnishing Ironmonger. *Abbott, Off. Ass.; Selby, St. John Street Road.*
Bricheno, Robert, Hemingford Grey, Huntingdon, Horse

Dealer. *Back, St. Ives; Walsley & Co., Chancery Lane.*
Beaumont, Frederick, Huddersfield, York, Grocer. *Jacomb & Tinsale, Huddersfield; Van Sanden, Old Jewry.*
Beckensall, John, Oxford Street, Wine & Brandy Merchant. *Knight, Church Court, Clement's Lane, Lombard Street.*
Broomhead, Thomas, Birmingham, Appraiser, Auctioneer, and Builder. *Holme & Co., New Inn; Bartlett, Birmingham.*
Baines, Thomas, Piccadilly, Seedsman. *Lowia, Crutched Friars; Clark, Off. Ass.*
Blake, James, Norton Falgate, Chemist & Druggist. *Aston, New Broad Street.*
Ball, George, Wood Street, Artificial Flower and Feather Manufacturer. *Kitchener, Off. Ass.; Lawrence & Co. Old Fish Street.*
Bye, Thomas, Rathbone Place, Oxford Street, Victualler. *Mark, Southampton Buildings, Chancery Lane.*
Back, Henry, Margate, Kent, Grocer. *Abbott, Off. Ass.; Redaway, Clement's Inn.*
Carter, Henry Chaplin, Tooting, Surrey, Linen Draper. *Tucker, Basinghall Street.*
Cockin, Richard, Doncaster, York, Maltster, &c. *Holme & Co., New Inn; Birks, Hemingfield.*
Crewe, Sarah & Elizabeth, Burnley, Stafford, Innkeepers. *Harding, Newcastle-under-Lyne, Stafford; Wilson, King's Bench Walk, Temple.*
Coles, William, jun., Mincing Lane, Broker. *Groom, Off. Ass.; Knox, Gray's Inn Square.*
Crooke, John, Burnley, Lancaster, Ironmonger. *Norris & Co., Great Ormond Street; Shaw & Co., Burnley.*
Carter, Samuel, Farnham, Surrey, Surgeon, &c. *Nelson, Essex Street, Strand.*
Courtney, Thomas & George, Old Jewry, Clothiers. *Belcher, Off. Ass.; Van Sanden, Old Jewry.*
Clarke, John, Birmingham, Warwick, Coal Dealer, &c. *Chilton & Son, Chancery Lane; Benson, Birmingham.*
Dove, William, Bath, Victualler. *G. Smith, Basinghall Street; Little, Bath.*
Drucker, Salem, Old City Chambers, Bishopsgate Street Within, Merchant. *Lloyd, Crown Court, Cheapside; Graham, Off. Ass.*
Dean, John, Liverpool, Tailor, &c. *Robinson, Liverpool; Blackstock and Bence, Serjeants' Inn, Fleet Street.*
Daubney, Thomas, Portsea, Southampton, Grocer. *Bullen, Gray's Inn Place; Long, Portsea.*
Dun, Maxwell Robert, & William Cleugh, London Street, Fenchurch Street, Merchants. *Gipson, Off. Ass.; Oliver & Co., Frederick's Place, Old Jewry.*
Hagglie, John, Albemarle Street, Piccadilly, Hotel Keeper. *Groom, Off. Ass.; Shaw, Ely Place, Holborn.*
Evans, David, jun., Liverpool, Joiner and Builder. *Mercroft, Liverpool; Chester, Staple Inn.*
Bld, John, Walsall, Stafford, Inholder. *Turner, Bloomsbury Square; Healey, Walsall.*
Emmett, Abraham, Holden Wood, near Haslingden, Lancaster, Cotton Spinner. *Milne, Parry & Co., Temple; Mitchell, Haslingden.*
Edney, John, jun., Merton, Surrey, Victualler. *Edwards, Off. Ass.; Hall & Bishop, Serjeants' Inn, Fleet Street.*
Furniss, William, Leeds, York, Smith & Farrier. *Griffith & Son, South Square, Gray's Inn; Wood, Leeds.*
Fenton, William, Belle Vue, Sandall, York, Schoolmaster. *Strangways & Co., Barnard's Inn; Blackburt, Leeds.*
Frost, John, and John Nelson, Huddersfield, York, Manufacturers of Fancy Goods. *Clarke, Richards, & Co., Lincoln's Inn Fields; Whitehead and Robinson, Huddersfield.*
Fallows, Josiah, jun., Oldham, Lancaster, Grocer. *Milne, Parry & Co., Temple; Skelthorn, Oldham.*
Graham, William, Rosemary Lane, Whitechapel, Victualler. *Groom, Off. Ass.; Bisset & Cox, Clock Lane.*
Geary, Nicholas, Southampton, Stay Manufacturer. *Edwards, Off. Ass.; Lawrence, Bucklersbury.*
Goude, Harry, Leicester, and Harpur Street, Red Lion Square, Seedsman. *Walker & Richards, Lincoln's Inn Fields; Clarke, Off. Ass.*
Green, Rhoda, Bristol, Hosier. *White & Whitmore, Lincoln's Inn; Evans & Britton, Bristol.*
Gorely, Daniel, Great Russell Street, Bloomsbury, Perfumer. *Belcher, Off. Ass.; Harvey, Barnard's Inn.*
Garratt, John, Muggershanger, Blunham, Bedford, Publican, &c. *Bays, Potton; Price & Watling, St. John's Square.*
Gilbert, James, Regent Street, and Paternoster Row, Bookseller and Publisher. *Reynell, Chancery Lane.*
Hobbs, John William, North Terrace, Mount Gardens, Lambeth, Music & Musical Instrument Seller. *Tennant, Off. Ass.; Gauntlett, Queen Street, Cheapside.*
Hayles, Charles, Portsmouth, Grocer. *Joiner, Chancery Lane; Low, Portsea.*
Haxby, William, Hunmanby, York, Lace Manufacturer. *Walsley & Co. Chancery Lane; Scatchburn & Co., Great Driffield.*
Hensman, Boswell, Queen Street Place, London, Money Scrivener. *Tennant, Off. Ass.; J. W. Taylor, Great James Street.*
Henwood, Nicholas, Penzance, Cornwall, Victualler. *Coode, Guilford Street; Pappeter, Penzance.*
Harria, William, sen., and W. Harria, jun., Liverpool, Linen Drapers. *Hampson, Manchester; Adlington and Co., Bedford Row.*
Hook, John, Great Alie Street, Goodman's Fields, Flour Dealer. *Groom, Off. Ass.; Young, Mark Lane.*

Howell, Edwin, Bread Street, Cheapside, Wine Merchant. Gibson, Off. Ass.; Smedley, New Inn Buildings, New Inn.

l'Anson, Thomas Gabriel, Aldgate, Woollen Draper. Lowe, Off. Ass.; Fisher, Queen Street, Cheapside.

Joy, Jehu, Ashford, Kent, Bricklayer. Tucker, Dean Street, Southwark.

Kettle, John Oliver, Southampton Street, Strand, Tailor. Edwards, Off. Ass.; Hopwood & Co., Chancery Lane.

Lear, Francis, Kingswood Hill, Bitton, Gloucester, Tallow Chandler, &c. Wasbrough & Co., Bristol; Evans, Bristol; Poole & Gamlen, Gray's Inn Square.

Lingford, John, Nottingham, Ironmonger & Iron Founder. Payne & Duff, Nottingham; Messrs. Taylor, Featherstone Buildings.

Lewellyn, William, Argoed Mills, Moneythusloyne, Monmouth, Miller. White & Whitmore, Lincoln's Inn; Bevan & Brittan, Bristol.

Mayne, John, West Smithfield, Victualler. Lowe, Off. Ass.; Messrs. Selby, Serjeant's Inn, Fleet Street.

Miller, Adolphus, Hermitage, Westbourne, Sussex, Rope Maker. Smart, Emsworth; Messrs. Dyne, Lincoln's Inn Fields.

Newland, Montague, Parliament Street, Westminster, Broker. Groom, Off. Ass.; Cocker, Nassau Street, Soho.

Peters, William, Blackfriars Road, Wine Merchant, and Oldham, Lancaster, Victualler. Adlington & Co., Bedford Row; Morris, Manchester.

Phillips, Hannah, Thame, Oxford, Innkeeper. Lowe, Off. Ass.; Messrs. Rose, Essex Street.

Pinwill, William Trancher, and J. H. Please, Exeter, Linen Drapers. Bratton & Co., New Broad Street; Bratton, Exeter.

Pinney, Bernard, Stafford Place, Pimlico, Picture Dealer. Green, Off. Ass.; Rogers, Manchester Buildings, Westminster.

Peake, Thomas, Shrewsbury, Grocer, &c. Ronalds, Crown Court, Old Broad Street; Cooper, Shrewsbury.

Poulton, William, Broadleaze, Cricklade, St. Sampson, Wilts, Cattle and Sheep Salesman. Demainbray, Highworth; White & Whitmore, Lincoln's Inn.

Pratt, Alexander, Redditch, Worcester, Surgeon, &c. Lowndes & Gatty, Red Lion Square; Creswell, Redditch.

Redgrave, William, Grosvenor Street West, Pimlico, Wire Worker & Fence Manufacturer. Robinson & Son, Half Moon Street, Piccadilly.

Robinson, Edward, Wakefield, York, Hosier. Wigglesworth & Co., Gray's Inn; Cattle, Wakefield.

Raby, Joseph, Darlington, Durham, Grocer, &c. Maynard, Durham; Miller, Ely Place.

Reynolds, Burgess, Birmingham, Draper and Tailor. Adlington & Co., Bedford Row; Wills, Birmingham.

Smith, Samuel, Birmingham, Victualler. Norton & Chaplin, Gray's Inn; Harkins & Co., Birmingham.

Sharman, Joseph, Birmingham, Grocer & Tea Dealer. Edwards, Off. Ass.; Sylvester & Walker, Furnival's Inn.

Surfen, T., Abchurch Lane, Wine Merchant. Young, George Yard, Lombard Street.

Savage, Henry, Oxford Street, Cheesemonger. Truant, Off. Ass.; Hatcher & Co., Crown Court, Threadneedle Street.

Sheen, Henry, Leicester, Grocer. Taylor, John Street, Bedford Row; Luck, Leicester.

Sart, John, jun., Belfast, Merchants. Johnson & Weatherall, Temple; Bagshaw, Manchester.

Sheward, George, Edgeware Road, Dealer in Horses. Bartley, Somerset Street, Portman Square; Graham, Off. Ass.

Smith, James, Bedford Row, Money Scrivener. Kitchen, Off. Ass.; Abrahams & Robson.

Stephenson, Edward, Liverpool, Joiner & Builder. Morecraft, Liverpool; Chester, Staple Inn.

Shaw, John, Great St. Helens, General Dealer. Abbott, Off. Ass.; Bart, Mitre Court, Milk Street, Cheapside.

Snuggs, Charles, Mint Street, Southwark, Cabinet & Looking Glass Manufacturer. Blake, Essex Street, Strand.

Shepherd, Henry John, Beverley, York, Dealer. Bell & Co. Bow Church Yard; Brook, York; Jenson, Beverley; or Shepherd, Beverley.

Shaw, Benjamin, Rochdale, Lancaster, Hat Manufacturer. Norris & Co., Great Ormond Street; Heaton, Rochdale.

Sparrow, Henry, Wolverhampton, Stafford, Iron Founder. Capes, Raymond Buildings; Holyoake, Wolverhampton.

Sims, William, St. Ives, and Penzance, Cornwall, Grocer, &c. Poole & Gamlen, Gray's Inn Square; Livett, Bristol.

Sikes, Shakespear Garrick, Huddersfield, York, Baker. Walker & Richards, Lincoln's Inn Fields; Clough & Norton, Huddersfield.

Stratton, George Frederick, Park Hall near Alcester, Warwick, and Fulham, Middlesex, Pipe Manufacturer. Lowe, Off. Ass.; Stokes & Co., Cateaton Street.

Thomas, William, Thomas, & Isaac, Narrow Street, Ratcliffe, Ship Owners. Kitchen, Off. Ass.; Blunt & Co., Liverpool Street.

Tobin, Edward, Rathbone Place, Oxford Street, Tailor. Lowe, Off. Ass.; Kightley, East Street, Red Lion Square.

Tunaichiff, Thomas Sibley, Leicester, Lace Manufacturer. Payne & Co., Nottingham; Messrs. Taylor, Featherstone Buildings.

Thomas, James, Walsall, Stafford, Saddlers' Ironmonger.

Walker & Richards, Lincoln's Inn Fields; Barnett, Walsall.

Taylor, Francis, South Molton Street, and Jacob's Wells Mews, Manchester Square, Carpenter & Builder. Belcher, Off. Ass.; Parker, St. Paul's Church Yard.

Townley, Adam, Stockport, Chester, Bookseller, Stationer, &c. Reece, Furnival's Inn; Marsden, Manchester.

Todd, William, Aylesford, near Newnham, Gloucester, Colour Manufacturer. Prince, Hell, & Co., Cheltenham.

Varnham, Thomas, Sinder Hill, Caverswall, Stafford, Clay Merchant. Barber, Fetter Lane; Young, Lane End, Stafford.

Wild, Thomas, Savage Gardens, Tower Hill, Wine Merchant. Gibson, Off. Ass.; Atkins, Fox Ordinary Court, Nicholas Lane.

White, Matthew, Emley, York, Joiner. Battye & Co., Chancery Lane; Scholefield & Holt, Horbury.

Whittle, George, Wolverhampton, Stafford, Saddler & Harness Maker. Clarke, Richards & Co., Lincoln's Inn Fields; Tyndale & Rawlings, Birmingham.

Westlake, William, Plymouth, Tailor, and J. Westlake of Romsey, Southampton, Tailor. Curtis, Romsey; Nelson, Essex Street, Strand.

Walker, George, Beverley, York, Draper. Dynaley & Co., Field Court, Gray's Inn; Shepherd, Beverley.

White, Thomas, Birmingham, Draper. Holme & Co., New Inn; Bartlett, Birmingham.

Williams, John, Fleet Street, Stationer. Green, Off. Ass.; Barber & Davidson, Furnival's Inn.

Wheeldon, Robert, Birmingham, Victualler. Harrison, Birmingham; Norton & Chaplin, Gray's Inn Square.

Whitburn, Robert, Esher, Surrey, Brewer. Clapham, Great Portland Street; Lackington, Off. Ass.

Witter, Thomas, Liverpool, Joiner & Builder. Frodsham, Liverpool; Adlington and Co., Bedford Row.

Whale, George Archibald, Bocking, Essex, Innkeeper. Taylor & Roscoe, Temple; Lane & Rankin, Bocking & Braintree.

Wallis, Philip, Comb Fields, Warwick, Shopkeeper. Austen & Hobson, Gray's Inn; Troughton & Lev, Coventry.

Whitmore, Felix, Lambeth, Surrey, Brewer. Sewell, Salter's Hall; Clark, Off. Ass.

Whitbourn, Edward, Percival Street, Clerkenwell, Coach Proprietor. Watson & Broughton, Falcon Square; Graham, Off. Ass.

Willcocks, Thomas, Bath, Cabinet Maker. Hardy, Barnard's Inn; Hellings, Bath.

LAW WORKS PREPARING FOR PUBLICATION.

[THE following List may be useful both to our Readers and to the large class of Legal Writers. We have not been able to include all the Works that are announced by the several Publishers, and it may be that some of the Works, though preparing for publication, may never be published. In our next number we shall probably be able to complete the List.]

Statutes.

An Analytical Digested Index to the Statutes at Large, from Magna Charta to the 11 Geo. 4, inclusive. By S. B. Harrison, Esq., and F. L. Wolleston, Esq., of the Inner Temple.

Conveyancing.

Fearne's Essay on Contingent Remainders and Executory Devises. A new edition, with additional Sections and Chapters, bringing down the Law to the present period. By W. Hayes and T. Jarman, Esqrs.

A Digested Index of all the Reports and Decisions at Common Law relating to Conveyancing and Bankruptcy, with the Statutes, from the earliest period to the present time. By Edward Chitry, Esq., of Lincoln's Inn, Barrister at Law, and Adam Bromilow, Esq., of the Inner Temple.

The Bills founded on the Real Property Reports, and now before Parliament, will be published immediately on their passing into laws, with explanatory and practical Notes, and the new Forms in Conveyancing to which they will give occasion. By George James Berrÿ, of Lincoln's Inn, Esq., Barrister at Law.

Law of Elections.

Heywood on County and Borough Elections. A new edition, incorporating all the alterations under the new Statute for the Election of Members of Parliament, with the Cases on Election Law down to the present period. By D. Maclean, Esq., Barrister at Law.

Notes of Proceedings in Courts of Revision held in October and November, 1832, before James Manning, Esq., Revising Barrister. With explanatory Remarks on the Reform Act. By William Montagu Manning, Esq., of Lincoln's Inn, Barrister at Law.

Nisi Prius Law.

An Abridgment of the Law of Nisi Prius. By E. Smirke and H. Roscoe, Esqrs., Barristers at Law.

Patents.

The Law of Patents, with Precedents. By John Coles, Esq.

Quarter Sessions, Magistrates, &c.

Reports of Cases relating to the Office of Magistrates, determined in the Court of King's Bench. Part I. of the New Series. By J. Manning, Esq. and R. Ryland, Esq., Barristers at Law.

Dickenson's Guide to the Quarter Sessions. A new Edition. By N. Talfourd, Esq., Barrister at Law.

A concise Treatise on Parish Law. By J. H. Brady.

Lunatics.

A Practical Treatise on the Law of Lunatics and Idiots. By J. S. Stock, Esq., Barrister at Law.

Principal and Agent.

The Law of Principal and Agent. By William Paley, Esq. The Third Edition, with considerable additions. By J. H. Lloyd, Esq., Barrister at Law.

Practice.

Archbold's Practice of the Court of King's Bench. Third Edition. By Thomas Chitty, Esq. Price's Notes on Points of Practice, and Cases decided in the Court of Exchequer.

Pleading.

Mitford on Pleading. A new and enlarged edition. By a Barrister of Lincoln's Inn.

Costs.

A Supplement to the Attorney and Agent's Table of Costs, containing the Fees and Charges occasioned by the New Rules of the several Law Courts, with additional original Bills of Costs, as recently taxed. By John Palmer, Gent.

Legal History.

Reeves's History of the English Law, with Notes, and an additional Volume, bringing the History down to the end of the Reign of George III. By a Barrister.

Law of Attorneys.

Supplement to a Treatise on the Law of Attorneys, Solicitors, and Agents: comprising all the recent Cases relating to the Qualification of Attorneys, their Retainer, Duties, Responsibility to the summary jurisdiction of the Courts, Liability to Actions, their Rights of Lien, and their Privileges and Disabilities. By Robert Maugham, Secretary to the Incorporated Law Society.

LIST OF NEW PUBLICATIONS.

Law of Stamps on Deeds and Assurances. By Thomas Coventry, Esq., Barrister at Law. Price 15s. cloth.

Reports of Cases upon Writs of Error, heard and decided in the House of Lords during the Session 1832. By C. Clark and W. Finnely, Esqrs., Barristers at Law, in continuation of Messrs. Dow and Clark. Vol. I., Part I. Price 7s. 6d.

Reports of Cases in the Court of King's Bench, in Hilary and Easter Terms, 1832. By R. V. Barnewall and J. L. Adolphus, Esqrs. Vol. III., Part II. Price 7s. 6d.

Bythewood's System of Conveyancing, continued by T. Jarman, Esq. Vol. IX., Part I. Price 10s. 6d.

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Reports of Cases in the Exchequer, at Law and in Equity, and in the Exchequer Chamber, in Easter Term, 3 Geo. 4. By G. Price, Esq. Price 9s.

Reports of Cases in Bankruptcy, in the Court of Review, and on Appeal before the Lord Chancellor, in Easter and Trinity Terms, and Sittings after Trinity, 1832. By E. E. Deacon and E. Chitty, Esqrs.

A Collection of the Public General Statutes passed in the Second and Third Years of the Reign of King William IV. Printed by His Majesty's Printers. Price 13s. boards.

The Legal Observer.

Vol. V. SATURDAY, JANUARY 5, 1833. No. CXVIII.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

LAWYERS IN PARLIAMENT.

WE are now able to furnish our readers with a complete List of all the Lawyers—English, Scotch, and Irish—in the new Parliament; and we have included in it, not only those who are in actual practice, but also those who have once been in our ranks, and who may therefore, it may be reasonably supposed, still retain an affection for their former profession. We must again express our regret that we do not find in this Parliament many persons who graced the last: we allude in particular to Mr. Serjeant Wilde, Sir Edward Sugden, and Sir Charles Wetherell. We are also sorry that the other branch of the Profession is deprived of so able a representative as Mr. Freshfield. We hope that all these gentlemen may still find their way into the House by some other road. Why did not Mr. Serjeant Wilde stand for one of the Metropolitan boroughs? We think his success would have been certain. This is the list:

Abercromby, Right Hon. James. *Edinburgh City.*
Bernal, R. *Rochester.*
Brougham, W. *Southwark.*
Buller, C. *Liskeard.*
Campbell, Sir John, K. C., Solicitor General. *Dudley.*
Carter, J. B. *Portsmouth.*
Estcourt, T. G. B. *Oxford University.*
Ewart, W. *Liverpool.*
Faithfull, ——. *Brighton.*
NO. CXVIII.

Fergusson, R. C. *Kirkcudbright.*
Godson, R. *Kidderminster.*
Grant, Right Hon. Robert. *Finsbury.*
Greene, T. *Lancaster Town.*
Grey, Sir George. *Devonport.*
Harvey, D. W. *Colchester.*
Hill, M. D. *Hull.*
Horne, Sir Wm., K. C., Attorney-General. *Marylebone.*
Inglis, Sir R. H. *Oxford University.*
Jeffrey, Right Hon. F., Lord Advocate. *Edinburgh City.*
Jervis, John. *Chester City.*
Kennedy, J. *Tiverton.*
Lamb, Hon. George. *Dungarvon.*
Lefevre, J. G. S. *Petersfield.*
Lefroy, Thomas. *Trin. Coll. Dublin.*
Lennard, T. B. *Maldon.*
Lloyd, J. H. *Stockport.*
Loch, James. *Kirkwall.*
Lushington, Dr. *Tower Hamlets.*
Lynch, A. H. *Galway.*
Macaulay, T. B. *Leeds.*
Maddock, John. *Denbigh.*
Neeld, Joseph. *Chippenham.*
Nicholl, Dr. *Cardiff.*
O'Connell, Daniel, K. C. *Dublin City.*
Parker, John. *Sheffield.*
Pepys, C. C., K. C. *Malton.*
Perrin, Serjeant. *Monaghams County.*
Phillpotts, John. *Gloucester City.*
Pollock, Frederick, K. C. *Huntingdon Town.*
Pryme, George. *Cambridge Town.*
Rice, Right Hon. T. S. *Cambridge Town.*
Roebuck, ——. *Bath.*
Rolfe, R. M., K. C. *Penryn.*

Romilly, John. *Bridport*.
 Romilly, E. *Ludlow*.
 Rotch, B. *Knaresborough*.
 Scarlett, Sir James, K. C. *Norwich*.
 Shaw, F. *Trinity College, Dublin*.
 Shiel, R. L., K. C. *Tipperary County*.
 Slaney, R. A. *Shrewsbury*.
 Spankie, Serjeant. *Finsbury*.
 Strutt, Edward. *Derby Town*.
 Sutton, Right Hon. Charles Manners. *Cambridge University*.
 Tancred, H. W., K. C. *Banbury*.
 Taylor, Right Hon. M. A. *Sudbury*.
 Tooke, William. *Truro*.
 Wallace, Thomas, K. C. *Carlow County*.
 Wason, Rigby. *Ipswich*.
 Wilks, John. *Boston*.

A VISION IN LINCOLN'S INN LIBRARY.

It happened that in the late month of December, I had (as has now for a considerable period been my daily habit) passed the morning, from ten o'clock, in the Library of Lincoln's Inn. On the day that I refer to, the Library had been rather full at its earlier part; but one by one the other persons, including even the Librarian, had departed, and I was left alone. I was amusing myself with one of those venerable black-letter folio Reports which are now, alas! but rarely opened, of which the Library possesses so complete a collection, and, "with that discoursing, I forgot all time." The day gradually closed in, and the ancient characters began to grow dim in my sight. The tops of the houses in Lincoln's Inn Fields were hardly perceptible, and the light of the ample fire was necessary to discern the furthest ranges of the labours of the sages of legal antiquity. I was sitting opposite a mighty edition of my Lord Coke's Institutes; and as I endeavoured to trace the letters on the back, I felt a mysterious presentiment over my whole frame. I sunk into a reverie, and whether what I afterwards saw was reality, or a dream, the reader must determine.

All at once the books divided, and a person clothed in the full costume of the age of Elizabeth stepped out. There was much dignity in his manner, and a look of profound sagacity and judgment in his face. As he approached me, an indescribable feeling of awe crept over me, and I felt I was in the presence of a being of another world, and of

one who had filled a distinguished part in this. I fancied I was beginning to recognize his features, when he addressed me in a voice at once deep and melodious: "My son," he said, "I have watched you for many years. I have marked with pleasure the zeal and industry with which you have proceeded through so many of the venerable volumes around us. Neither am I unwilling to own that I have been gratified by the preference you have shewn for my own labours;" and here he pointed to the Institutes and the Reports, and I was then certain that the shade of the illustrious Lord Coke addressed me. "Alas! (he continued) there are but few, my son, such as you. My spirit hovers round these walls. My soul is in the doings of my life; and I have watched with pain the gradual distaste for the learning of the fathers of the law. Of the many who enter here in the day, how few are there that seek the dusty folios at this end of the room! No, the modern treatise, the last year's reports, the light octavo, are now resorted to. Even me have they curtailed of my fair proportions. There do I stand, in showy calf and gilt, in what is called a new edition, instead of my former folio robe of vellum. And then, my son, how have they nullified my labours. Three-fourths of my works have been rendered obsolete. Homage and Fealty, Esuage and Villenage, have long been done away with. Attornment was sacrificed by Queen Anne, and they now threaten to abolish the very name of Warranty. What will next be attacked? what bond of property will next be unloosed? A Feoffment is now an idle word. Livery of Seisin, one of my most potent charms, has lost its effect. Disseisin, where is it? Estoppel, what is it? Have I laboured for this? Have I extracted all that was good and curious from the ancient Judges of the land, and poured upon their learning a flood of my own? Is it for this that I founded a monument, as I thought, more durable than brass? Already *Dunpor's case* is threatened; and if *Shelley's case* is left me another year, I shall much wonder. What havoc has not been made in all that is around us! Why do they not at once put a torch to the whole of this fabric, and burn us to the ground?"—Here he stopped, evidently much affected; and continued, more in sorrow than in anger: "And yet I am not so ill used as others. Where are the Year Books? Where are Glanville, and Bracton, and Fleta? Where is Britton, and Hengham? Where is Brooke, and Fitzherbert? Where is Rolle's Abridg-

ment? alas! how abridged! Where is Jenkins, and Benloe, and Anderson, and Kailway? Where is the venerable Dyer? Where is Leonard, and Owen, and Moore; and where is Plowden?" As he said this, the whole room shook, and was obscured by mighty clouds of dust. The shelves trembled; and a host of venerable persons stepped from them; and crowded round him who had invoked them. They were most of them clothed in their Judges robes of scarlet and ermine, with gold chains round their necks; for in their days the Judges were in most cases the Reporters. They ranged themselves in a long row, and my heart rejoiced within me that I had lived to see a sight so august. "These," said Lord Coke, "are my brethren; and with these, and some few others who have lived after us, do I consort. Here, unseen by mortal eyes, do we dwell; and most deeply do we feel any attack made on what we hold most dear—our characters as lawyers. If one of our cases is overruled by some daring modern Judge, our whole body feels the injury; and we take as lively an interest in the publication of a new number of Reports as a law-bookseller. Thus much do I now inform you, my son: continue your progress here as you have begun, and you shall know more; I will visit you again." Saying this, the whole venerable band disappeared to a sound that fell upon my ears like the tolling of a bell; and as I came to myself, I found the sound continue; for it was nine o'clock, and the chapel-bell of Lincoln's Inn was, as usual, proclaiming that hour.

† * †

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1831—1832.

No XIII.

Amongst the Acts of which it may be useful to give a concise Analysis, are two of a commercial nature; namely, the Customs and the West India Colonies.

customs. 2 & 3 W. 4, c. 84.

Various alterations and amendments are effected by this Act in the Laws relating to the Customs. It was passed on the 3d of August, 1832, and came into immediate operation.

The 2d section relates to the management of business at the Custom House.

Regulations.—3. Certificate of landing not required for drawback, or bounty on goods from Guernsey or Jersey. 4. Masters of vessels from Africa are to report the Africans taken on board. 5. Bonds to be given to maintain or send back Africans. 6. The certificates of the entry of goods inwards are repealed. 7. Restrictions as to piece goods repealed. 8. Value of goods. 9. Additional ports may be appointed for warehousing tobacco. 10. Foreign goods, derelict and wreck, deemed the produce of such country as the Commissioners may determine, and not selling for the amount of duty, may be delivered to the Lord of the Manor, chargeable with *ad valorem* duty. 11. Allowance made for damage. 12. Goods landed by bill of sight fraudulently concealed, liable to forfeiture. 13. Restriction on importation of wine, unless in 60 ton vessel, repealed. 14. Power to His Majesty to appoint legal ports and quays, and annul the same. 15. Regulation as to averring offences against the Act. 16. Unauthorized persons not to be permitted to make entries.

Smuggling.—17. Boats used in fishing on the coast of Ireland, not required to have licences. 18. Penalty of 100*l.* for assisting in unshipping prohibited or uncustomed goods. 19. Persons carrying tea or manufactured silk, to forfeit treble the value, and liable to detention. 20. Vessels used in piloting or fishing, to be painted black. 21. Carts, &c. may be searched. Refusal liable to 100*l.* penalty. 22. Penalties recoverable in the King's Bench and Common Pleas in Ireland. 23. Those Courts to have concurrent jurisdiction with the Exchequer. 24. Under writ of assistance from Exchequer, houses may be searched, doors broken open, and packages seized. 25. Penalties of 100*l.* for resisting officers, or rescuing or destroying goods. 26. Offering bribes to officers, penalty 200*l.* 27. Property seized shall be deemed to be condemned, unless claimed. 28. Justices may commit if penalty not paid. 29. Persons employed in preventing smuggling, deemed duly appointed. 30. Restricted goods to be deemed run goods. 31. Persons in gaol not pleading, judgment may be entered for default. 32. Married women may be committed.

Register.—33. Collector, with governor, lieutenant-governor, or commander-in-chief, may make registry, where there is no

comptroller. 34. Declarations substituted for oaths.

Duties.—35. New duties are imposed on certain articles. They are, in general, of a reduced amount, compared with the former Acts. 36. Import duty on printed linens repealed. 37. Linen and woollen mixed, exported to the East Indies, duty free. 38. Coin exempt. 39. Drawbacks repealed. 40. Confirming the prisage and butlerage of wines brought into Palatine of Lancaster.

Warehouse.—41. Warehoused cocoa may be abandoned within a month. 42. Restriction to three dozen on wine bottled in warehouse, repealed. 43. Spirits may be bottled in warehouse for exportation. 44. Allowance of duty on spirits for diminution of strength. 45. Allowance on spirits entered for home consumption. 46. No allowance for leakage or accident. 47. Mode of charging duty on sugar, and allowance for waste. 48. Goods allowed to be shipped as stores, duty free.

Bounties.—49. Bounty on cordage repealed.

Possessions Abroad.—50. Restrictions repealed as to exporting wine from Guernsey, &c. 51. As to exporting and importing spirits. 52. Duties on certain colonial goods repealed. 53. Free ports may be made in Colonies for limited purposes. 54. Coals may be re-exported. 55. All British vessels subject to equal duties in the Colonies. 56. Newfoundland duties. 57. Disposal of seized goods. 58. Security to abide appeal. 59. Fines to be paid to the Collector. 60. Penalty of 200*l.* for using forged documents.

Isle of Man.—61. Rum imported, charged according to strength.

Reciprocity Acts.—62. The 59 Geo. 3. c. 54, to apply to all Foreign Powers, as well as United States and Portugal. 63. But not to be construed as granting powers beyond subsisting treaties. 64. The Privy Council may declare the powers with whom treaties are subsisting.

WEST INDIA COLONIES. 2 & 3 W. 4, c. 125.

This Act, which passed on the 16th of August last, authorizes the issue of Exchequer Bills to the extent of one million, for giving relief to certain Colonies in the West Indies, which had suffered both from insurrections and hurricanes, and from the late alterations in the Laws relating to Slaves.

The following Commissioners are appointed; viz. Henry Berens, John L. Wodehouse, Thomas Jones Howell, John Labou-

chere, and James Morris, Esquires. The Governors, Attorney Generals, and two resident inhabitants, are to be Commissioners in the Islands.

They are to meet and receive applications, and ascertain the amount wanted. They may examine upon oath or affirmation parties willing to be examined, and receive depositions made before magistrates, and persons giving false testimony are liable to the penalty for perjury. The applications are to be classed, and sums appointed, and security taken by mortgage, &c. for re-payment. £500,000 may be appropriated to Jamaica, and £500,000 to Barbadoes, St. Vincent, and St. Lucie, in such proportions as the Commissioners think fit.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XXXVIII.

THE RIGHT OF BARRISTERS AND ATTORNEYS TO BE HEARD BEFORE MAGISTRATES.

In our second volume, p. 135, we gave a report of the case of *Collier v. Hicks*, on this subject, and we afterwards considered the effect of that decision, p. 350. The case has since been reported at length by Messrs. Barnewall and Adolphus; and we consider it to be so important, that we shall give the judgment of the Court at length.

Lord Tenterden, C. J.—The question raised in this case, is not whether any person has a right to be present on the trial of an information before a magistrate, as long as he conducts himself with decency and propriety; nor whether any one, whether attorney or counsel, or of any other description of persons, may or may not be present, and take notes, and quietly give advice to either party; but the question is, whether any one is entitled, without permission of the magistrates, and as a matter of right, to attend, and take part in the proceedings as an advocate, by expounding the law, and examining the witnesses. This was undoubtedly an open Court, and the public had a right to be present, as in other Courts; but whether any persons, and who, shall be allowed to take part in the proceedings, must depend on the discretion of the magistrates, who, like other judges, must have the power to regulate the proceedings of their own Courts. The Superior Courts do not allow every person to interfere in their proceedings as an advocate, but confine that privilege to gentlemen admit-

ted to the bar by the members of one of the Inns of Court. They do not allow attorneys to practise as advocates; and in one of them (the Court of Common Pleas) even all gentlemen of the bar are not allowed to exercise all the duties of advocates, but the full privilege of so doing is confined to those who are of a degree of the coif. So doctors of the civil law are not allowed to act as advocates in the Courts at Westminster, although they may do so by special permission of those Courts. So at the quarter sessions, the justices usually require that gentlemen of the bar only should appear as advocates; but in remote places, where they do not attend, members of the other branch of the profession are permitted to act as advocates. Persons not in the legal profession are not allowed to practise as advocates in any of these Courts. On the hearing of an information, the magistrates, having the discretionary power to regulate the proceedings of their own Courts, may decide who shall appear as advocates, and whether, when the parties are before them, they will hear any one but them. It may be, and is in some cases, very convenient that magistrates should hear counsel or attorneys as advocates, and allow them, as they frequently do, to expound the law, examine witnesses, and reason on the facts; but it has never been decided that any one can claim as a right to act in that capacity, without the consent and against the will of the magistrates. Any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice; but no one can demand to take part in the proceedings as an advocate, contrary to the regulations of the Court, as settled by the discretion of the justices. It may be said, that a denial of this right in proceedings before magistrates will be a hardship on the parties. I cannot accede to that opinion; on the contrary, I think it may be for the benefit of the parties that such right should not be admitted. If the informer may, as a matter of course, demand that a professional advocate shall be heard for him, though he himself be present, the accused must have the same right. The consequence would be, that the parties would in most cases be put to a heavy and grievous expense. My own opinion is, that in general the ends of justice will be sufficiently well attained in these summary proceedings, by hearing only the parties themselves, and the evidence, without the nicety of discussion and subtlety of argument which are likely to be introduced by persons more accustomed to legal questions. For these reasons, I think that the judgment of the Court must be for the defendant.

Littledale, J.—I am of the same opinion. Every Court of Justice has the power of regulating its own proceedings. In the superior Courts in Westminster Hall, where barristers attend, they only are permitted to act as advocates. Perhaps if they did not attend, attorneys might be heard as advocates. There is a difference even in the superior Courts in this

respect. In the Common Pleas, barristers only of a certain rank and degree are permitted to plead. Here the right claimed, is for all persons to attend as advocates. The plaintiff, indeed, is an attorney of one of the superior Courts; but he can derive no right from that character, to act as an advocate in a proceeding before a magistrate. It seems to me, as magistrates have a right to regulate their own proceedings, they must consequently have authority to decide whether advocates shall or shall not be permitted to plead before them; though in cases of difficulty, it may be desirable and advisable that the liberty should be granted. I am therefore of opinion, as to the present case, that the plaintiff had no right to take part in the proceedings, or in the examination of the witnesses, as an advocate, without the permission of the magistrates, and consequently, that the alleged trespass is well justified.

Parke, J.—My opinion in this case is not founded in any degree on that part of the plea wherein it is alleged, that the plaintiff was taking notes of the evidence of a witness then under examination; but on the other part, where it is stated, that he was acting and interfering in the proceedings, and in the examination, as an attorney or advocate, on behalf of the informer; and that the justices told him it was not their practice to suffer any person so to do, and requested him to desist, but were ready to permit him to remain in the police-office as one of the public; that he asserted his right to be present and to take a part in the proceedings, and to act as such attorney or advocate on behalf of the informer; and that he did, against the will of the justices, continue in the office acting and taking a part in the proceedings as such attorney or advocate. I am of opinion that, in point of law, this plea is a good justification. It is undoubtedly so, unless it can be made out that all the king's subjects have a right to attend a Court of this description, not merely to act as professional advisers, but to take part in the proceedings in the examination of witnesses, and to act as an advocate usually does. Now it is impossible to say that all the king's subjects have a right to act as professional assistants, in the way in which the plaintiff has claimed to do it, either to the party accusing or accused. All may be present; and either of the parties may have a professional assistant to confer and consult with, but not to interfere in the course of the proceedings. No person has a right to act as an advocate without the leave of the Court, which must of necessity have the power of regulating its own proceedings in all cases where they are not already regulated by ancient usage. In the superior Courts, by ancient usage, persons of a particular class are allowed to practise as advocates, and they could not lawfully be prevented; but justices of the peace, who are not bound by such usage, may exercise their discretion whether they will allow any, and what persons, to act as advocates before them. Here the plaintiff, having insisted upon the right to act as advocate, the

defendants were justified in committing the alleged trespass.

Thurnton, J.—I am of the same opinion. The decision in this case will not be an authority for saying, that a person in a police-office has no right to take notes, but that he has no right to act as an advocate for an informer in a proceeding on a penal statute, without leave of the justices. On such occasions they have the same discretion which every other Court has to regulate their own proceedings.

Judgment for the defendant.—*Collier v. Hicks*, 2 B. & Ad. 663.

FUND FOR DEFRAIVING THE EXPENSE OF BUILDING NEW COURTS AND OFFICES ON THE ROLLS ESTATE.

THE approach of the meeting of the new Parliament induces us again to advert to the necessity of providing new Courts and Offices, in conjunction with the intended building for the preservation of the Public Records. The most formidable objection against improvements of this nature is generally that of *expense*; and it may be useful, therefore, to advert to the "ways and means" pointed out by Mr. Cooper, in the publication which we noticed in Vol. IV. p. 357.

"It is well known (he says) that a small portion only of the multifarious business of the Court of Chancery arises from litigation. Its most important functions are of an administrative and not a judicial kind, and are limited to the management and application of the corpus and income of the vast property, which, for the security of the rights of infants, lunatics, annuitants, remainder-men, and others, is placed under its superintendence. This property necessarily undergoes a constant change in its component parts, but it does not appear ever to have experienced any diminution in value or amount. That portion of it, which consists of monies and stock paid and transferred to the Accountant-General, is stated, soon after the institution of that office, to have exceeded 1,723,000*l.*, and for several years it has averaged nearly forty millions. It will excite no surprise that so immense a deposit should, in the course of a century, from non-claim and other causes, have produced large profits. It is from these profits that the "Suitors' Fund" is for the most part derived. Different sums, amounting in the whole to 950,000*l.*, have, under various acts of parliament, been taken out of the cash of the suitors lying dead and unemployed in the Bank, and have been invested in the three per cents. to an

account entitled, "An Account of Monies placed out for the benefit and better security of the High Court of Chancery." This fund forms in consols and reduced 1,183,058*l.* 10*s.* 1*d.* Part of the income of these investments has been applied by virtue of the same act of parliament, in payment of the salaries of sundry officers of the Court, and in defraying the expense of building different offices for the more convenient transaction of business, and the surplus income has been carried to an account called 'An Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the benefit and better Security of the Suitors of the High Court of Chancery.' This last fund amounts in consols and reduced to 771,957*l.* 0*s.* 8*d.* A small part of the income is applicable in the same manner as the income of the first-mentioned fund.

"In round numbers the total income of both the above-mentioned funds may be called 60,000*l.*; and the total amount of the present yearly charges upon it may be stated at 35,000*l.*, leaving a surplus revenue of 25,000*l.* per annum.

"Now it being obvious that the principal stock purchased with the 950,000*l.* is amply sufficient to answer all demands of the suitors, even if every forgotten and extinct claim could be revived, it follows that no portion of the Suitors' Fund, which arises from the accumulations of the surplus interest, will ever be wanted. The investments from accumulations are not, however, the only part of the Suitors' Fund which will never be wanted to answer their demands. Persons best acquainted with the workings of Chancery suits have computed that the monies and stocks standing to the credit of various suits, but which for different reasons never will be claimed, do not fall short of a million, which exceeds the total amount of the sums taken out of the cash of the suitors, lying dead and unemployed in the Bank."

Mr. Cooper then observes, that after deducting so much of the *accumulated surplus interest* as is requisite to supply the small deficiency of the income of the parent fund, to meet the yearly charge of 35,000*l.*, there will remain not less than 600,000*l.* stock in the 3 per cents, which, it is conceived, *belongs to nobody*; and therefore he proposes that it should be advanced, by way of mortgage, on the security of the Rolls Estate and the proposed New Buildings.

The details of the investments of the original monies, and the surplus income, as well as the yearly and other charges, are given in the following appendix; and Mr. Cooper remarks, that the *dividends* only have been applied for the purposes mentioned in the different acts, even when such purposes were the erection of buildings.

SUITORS' FUND.

Amount of Expenditures made out of the unemployed Fund of the Suitors in the Bank of England.

Act under which Expenditure made.	Sum authorized to be laid out.	Sum actually laid out.	Stock purchased.		Purpose for which Dividends were appropriated.
			5 per cent. Consols.	3 per cent. Reduced.	
12 Geo. 2, c. 24	£. s. d. 35,000 0 0	£. s. d.	£. s. d.	£. s. d.	Salaries of Accountant-General and two Clerks.
4 Geo. 3, c. 32	5,000 0 0	59,983 14 0	64,900 0 0	.....	Salary of his third Clerk.
9 Geo. 3, c. 19	29,000 0 0	.....	.....	.....	Additional Salaries to Accountant-General, and to his first and second Clerks, and Salary to a fourth Clerk.
5 Geo. 3, c. 28.	80,000 0 0	79,983 16 3	91,350 0 0	.....	Salaries to each of the Eleven Masters.
14 Geo. 3, c. 43	50,000 0 0	50,000 0 0	56,513 7 11	.....	Purchasing the and building: Inrolment Offices, Officers.
32 Geo. 3, c. 24	300,000 0 0	300,000 0 0	.....	324,955 18 10	Additional Salaries to Salaries to a 6th and Secretaries of bankrupts and insurers—regarding such Offices, and those of the Register and Accountant-General, and insuring them against Fire.
50 Geo. 3, c. 161	200,000 0 0	200,000 0 0	239,332 6 4	47,553 19 2	and for the Examiners, Curators, Clerk the Petty Bag, and Salaries to the Ex- and Court Keeper. Payment of annual and other necessary Articles for the use
53 Geo. 3, c. 24	60,000 0 0	60,000 0 0	100,450 4 8	.....	Salaries of the Vice-Chancellor, his Secretary, Trainbearer, and Usher.
56 Geo. 3, c. 38	200,000 0 0	200,000 0 0	191,002 13 2	54,000 0 0	Salaries for Clerks in the Report Office.
	950,000 0 0	949,887 10 3	736,548 12 1	446,409 18 0	

1832, February.—PRESENT STATE OF THE FUND.

The following Sums, with the addition of 500*l.* Three per cent. Consols, brought over as mentioned below, were purchased, as appears by the foregoing Account, with unemployed cash; and they stand on an Account, entitled, "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery."

	<i>Capital Stock.</i>			<i>Annual Income.</i>		
	<i>£.</i>	<i>s.</i>	<i>d.</i>	<i>£.</i>	<i>s.</i>	<i>d.</i>
In Bank Three per cent. Consolidated Annuities . . .	736,548	12	1			
Brought over from the Account of the Six Clerks, pursuant to an Act of 10 Geo. 4, c. 116	500	0	0			
	737,048	12	1	22,111	9	2
In Bank Three per cent. Reduced Annuities	446,509	18	0	13,395	6	0
				35,506	15	2
The following sums have been accumulated from surplus Dividends of the above original fund, and stand on an Account, entitled, "Account of Securities purchased with Surplus Interest arising from Securities carried to an Account of Monies placed out for the benefit and better security of the Suitors of the High Court of Chancery."						
In Bank Three per cent. Consolidated Annuities . . .	214,394	16	3	6,431	16	4
In Bank Three per cent. Reduced Annuities	557,562	4	5	16,726	17	2
				58,665	3	8
Annual Payment by the Lord Chancellor towards the Vice-Chancellor's Salary, under 53 Geo. 3, c. 24 . . .				2,500	0	0
Total Annual Income, February, 1832.	£61,165	8	8			

ANNUAL CHARGES THEREON.

	<i>£.</i>	<i>s.</i>	<i>d.</i>
Salaries to the Vice-Chancellor and his Officers	5,800	0	0
Salaries to the Accountant-General and eighteen Clerks in his Office, with allowance of 400 <i>l.</i> per annum for Stationery, &c.	6,620	0	0
Salaries of 600 <i>l.</i> each to the Eleven Masters, five pensions of 1500 <i>l.</i> each to retired Masters, and a sum of 150 <i>l.</i> 10 <i>s.</i> per annum for expenses of Public Office	14,250	10	0
Salaries and allowances for Stationery to four Deputy Registers, Salaries to eight Clerks in their Offices, and to two entering Registers	3,410	0	0
Allowance for Stationery to the Master of the Report Office, and Salaries to eight Clerks in his Office	2,260	0	0
Salaries to two Examiners, and Pensions to three Deputy Examiners who were displaced on new modelling the Office in 1810	1,100	0	0
Salaries to the Usher, Court-keeper, four additional ditto, Surveyor of Buildings, and Attendant on the Stoves in Offices in the Rolls Yard	610	0	0
Annual Disbursements of the Usher and Court-keepers for Stationery and other articles supplied for the use of the Court and its Officers, on an average of the last four years	1,624	10	2
	£35,675	0	2

Besides the foregoing Charges the Income of the Fund is liable to the Repairs and Insurance against Fire of the following Buildings:—

Masters' and Public Offices, Southampton Buildings.

Vice-Chancellor's Court, Lincoln's Inn.

The Accountant General's and Registers' Offices, Chancery Lane.

The Six Clerks and Inrolment Offices, ditto.

The Examiners

Petty Bag

Crown

Cursitors

Subpoena

} Offices, in Rolls Yard.

Also, to the Costs of the necessary applications to the Court.

And it may become liable to retiring Pensions to Masters, Registers, Examiners, and to Clerks in the Accountant General's and Examiner's Offices.

After providing for the Expenditure of each current quarter, the Surplus Money is invested quarterly in Stock, which is carried to the Account of "Securities purchased with Surplus Interest, &c."

REVIEW.

The Statutes founded on the Common Law Reports ; including the Judgment and Execution Act, the Prohibition and Mandamus Act, the Interrogatory Act, the Interpleader Act, and the Uniformity of Process Act, with the Orders made under it ; with Introductory Observations and Notes. By A. Hayward, Esq., of the Inner Temple, Barrister. Saunders and Benning.

THIS is an able, concise, and useful Book. Each statute is introduced with a clear explanation of its object,—the inconvenience or evil it is intended to remove,—and followed by notes, elucidating the effect of the change.

The object of the first six sections of the *Judgment and Execution Act*, Mr. Hayward observes, is to obviate one of the many inconveniences resulting from the institution of Terms, which frequently occasioned a considerable delay in cases where a writ of inquiry was necessary, or a trial took place. He then gives a recapitulation of the steps immediately preceding the signing of final judgment in such cases, to explain the nature of the inconvenience which existed, and adds as follows :

"Considering the length of some of the vacations, the consequent inconvenience is obvious enough. The difficulty was to remedy it without depriving the losing party of the privilege of moving the Court. This difficulty is conceived to be met by enacting, in the case of a writ of inquiry, that the writ may be made returnable on any day certain in term or vacation, and that the party may proceed to execution forthwith, unless the sheriff or other officer before whom the writ may be executed, shall certify under his hand upon such writ, that judgment ought not to be signed until the defendant shall have had an opportunity of applying to the Court, or one of the Judges of the courts of law at Westminster shall order the judgment to be stayed. In cases where an issue is set down for trial, and a nonsuit or verdict ensue, the same end is obtained by investing the Judge with the power of ordering execution immediately, subject to such condition or qualification as he may think fit to impose, leaving the jury writs returnable as formerly, but making their returns comparatively immaterial. A general power is reserved to the court in which the action is brought, to set aside all such accelerated proceedings, and restore the losing party to all he may have lost,

—thus guarding against any omission to certify on the part of the sheriff, and any improper certificate on the part of the Judge."

Some cases are referred to in the notes, illustrative of the manner in which the discretionary power conferred by the second section will be exercised by the Judges.

We pass by the remarks on the *Prohibition* and *Mandamus Act*, as not very generally useful in ordinary practice. The *Interrogatories Act* is ushered in by citing the authorities in favor of its provisions, particularly Blackstone, 3 Com. 75, 382. The interrogatories must be framed, the author observes, with reference to the rules of evidence applicable to *viva voce* examinations.

"Thus they must not be leading, as *Did you not do or see, &c. Did you not hear that, &c.* and a witness may object to answering questions which have a direct tendency to criminate himself. Privileged persons, also, are excused. The examination of foreigners must be in English, and the interrogatories must for that purpose be translated into the language of the deponents, and their answers translated by sworn interpreters. The interrogatories must be on *stamp* [qu.] and signed by counsel. A copy, also on *stamp* [qu.] is given to the opposite attorney, with notice of the time when the examination is to take place, and he may file *cross* interrogatories if he thinks proper. Cross interrogatories are confined to the points to which the witness is produced. Cross examining a witness by one side, in any matter relating to the merits, makes him a good witness for the other side. It seems also, that the same witnesses may be re-examined on fresh interrogatories by leave of the Court."

Reference is made to Mr. Willis's *Law and Practice of Interrogatories*, and Mr. Tidd's *Practical Forms*; and Mr. Hayward adds forms of interrogatories, mostly taken from works of authority, which will be useful to the practitioner in cases applicable to the statute.

The *Interpleader Act* is thus introduced :

"The inconvenience which gave rise to this act is accurately set forth in the recital. The remedy was suggested by the Common Law Commissioners, but many traces of the principle appear in the ancient modes of proceeding in our Courts. Not to mention *voucher*, which still forms an essential part of a recovery, the practices called *aid prayer* and *garnishment* are instances of compelling a third party, interested in the subject-matter, to become a party to the suit. *Aid prayer* took place where an action was brought against a person who had

only a qualified property in the thing, in question, as a tenant for life, who was then at liberty to pray the aid of the remainder man or reversioner. The practice prevailed not merely in real actions, but in many personal actions, as replevin, trespass, debt and annuity, as well. *Garnishment*, which affords a still more direct precedent to the commissioners, was confined to actions of detinue. Thus, in an action for deeds delivered by the plaintiff to the defendant to be redelivered on demand, the defendant might plead that they were delivered by the plaintiff and one *N.* upon certain conditions, and that he did not know whether the conditions had been performed, wherefore he prayed *garnishment* against *N.*,—that is, that *N.* might be summoned to show whether they had been performed. Upon this, a *scire facias* would issue against *N.*, who, under the name of *garnishee*, became defendant to the suit, the first defendant being considered as out of Court by the *garnishment*. This is the account given by Reeves, who has added the form of entry upon the record.

“These modes of proceeding are evidently of very limited application, and have been long obsolete. The recital in the act therefore is now strictly true, that a party sued for money or goods in which he has no interest, has no means of relieving himself but by a suit in equity. But the necessity of resorting to equity is not altogether removed, for the statute applies only where an action has been actually commenced; whereas a mere claim is ground of interpleader in equity, and the bill is maintainable where the demand of one party is by virtue of an alleged legal, and the other by virtue of an alleged equitable, right. It is also to be observed, that the statute is limited to actions of *assumpsit*, *debt*, *detinue*, and *trover*, although, beyond a doubt, equally called for in *trespass*, and not perhaps wholly inapplicable to *covenant*.

“The sixth section is for the relief of sheriffs and other officers in the execution of process against goods and chattels, their situation being somewhat doubtful before the passing of the act.”

The notes on this statute are also important, particularly in regard to proceedings against Sheriffs.

On the *Uniformity of Process Act*, Mr. Hayward observes, that to give a history of the inconveniences which the statute is intended to remove, would be to give the history of our Courts; and he refers to Mr. Tidd's account of the twenty or thirty different modes of commencing a personal action in the three Common Law Courts. These, the author points out, are now reduced to four; namely, 1, Serviceable process, in common cases; 2, Bailable process; 3, Proceedings against Prisoners; and, 4, against Members of Parliament.

Of the Rules issued under the authority of the Act, the author remarks that their

principal object has been to point out particular modes and forms of doing what is only prescribed in general terms in the Act; and the Rule, if any, is indicated by a note or reference in the section to which it relates. The notes on this statute are admitted to be more in conjecture than could be wished; but acknowledgment is made of many useful suggestions of the periodical Press, amongst which we find that our own labours have not been overlooked.

SUPERIOR COURTS.

Exchequer.

SPEEDY EXECUTION.—COSTS.—SUGGESTION.—COURT OF CONSCIENCE.—IGNORANCE OF RIGHTS.

When a judge, at the assizes, in pursuance of the provisions of the 1 W. 4. c. 7, orders that the plaintiff shall have execution within a limited time, and judgment is thereupon entered up and execution is issued, the defendant is not precluded from applying in the next term to the Court above, to enter a suggestion to deprive the plaintiff of costs.

A judge, at the assizes, has no power to order such a suggestion to be entered.

It is the sum which the plaintiff ultimately recovers, and not the sum which the plaintiff claims to be due, which is to decide whether the plaintiff ought to have sued in the Court of Conscience or in the superior Court.

Where two parties come to an arrangement, and one is ignorant of his rights, the agreement is not, in general, binding upon him.

Campbell, on a former day, had obtained a rule calling upon the plaintiff to show cause why the defendant should not be at liberty to enter a suggestion on the roll to deprive the plaintiff of costs, in pursuance of the provisions of the 47 G. 3. c. 36. § 12, (local and personal) for establishing a Local Court at Oswestry, in Staffordshire, for the recovery of debts not exceeding 5l., and which provided, that if an action should be commenced in any other Court, for a debt recoverable in the Local Court, the plaintiff should not be entitled to any costs; and also for returning to the defendant the amount of the plaintiff's costs which had been levied upon the defendant.

N. Richards and Follen now showed cause, on three grounds:—1st, This case does not come within the act. 2dly, The parties have arranged between themselves, so as to prevent this Court from interposing. And, 3dly, This Court has no power to order a suggestion to be entered. This action was brought to recover money due as the balance of an unliquidated

account; it came on to be tried at the Stafford Assizes in July last, and was referred to Mr. Shutt, who ordered a verdict to be entered for the plaintiff for 1*l.* 9*s.* 1*d.* It had been agreed that the plaintiff was not to be delayed if there was a verdict for him; and Hunt, the defendant's attorney, signed a written consent that the Judge should certify that the plaintiff might issue execution within one month. The affidavits show that the action was originally brought for the sum of 13*l.* 2*s.* 4*d.*, and that was the sum claimed on the copy of the writ: the words of the act are, "if any action shall be commenced for any debt under 5*l.*, the plaintiff shall have no costs." This action was therefore commenced for a sum not within the cognizance of the Court of Requests. The defendant claimed to set off a sum of 7*l.* 12*s.* Both sums were reduced by the arbitrator: the plaintiff's to 4*l.* 1*s.* 1*d.*; the defendant's to 2*l.* 12*s.*; and the difference of those two sums was the sum of 1*l.* 9*s.* 1*d.*, for which the arbitrator ordered a verdict to be entered for the plaintiff. But the accounts were confused and complicated; and a letter of the defendant's attorney expressly says, "the accounts are so complicated, a jury will never get to the end of them." There is also the positive oath of the plaintiff, that more than 12*l.* was due to him. It would be very hard, therefore, that a plaintiff who *bonâ fide* sues for a debt which he believes to be due, should be liable to be deprived of his costs, because from some cause over which he may have no control, he cannot substantiate it to its full extent. These acts do not apply where the sum claimed is reduced by cross demands. [*Bayley*, B.—You are to consider the demand, not according to what you claim, but what you prove: that has been expressly held in *Shaddick v. Bennett*, 4 Barn. & Cres. 769. Your affidavits do not specify any items to show that more than 5*l.* was due.] The plaintiff's affidavit expressly states that more is due, and the defendant's does not contradict it, but merely states what the arbitrator found. But, secondly, this application is against good faith: both parties consulted together, and it was agreed to refer the cause, and that the Judge should certify for the plaintiff for execution in a month. Both parties ought to be concluded by this arrangement; and even supposing both were ignorant of the provision respecting costs in the local act, it is too late now for one party to take advantage of it. The defendant first applied to the arbitrator; but he declined to make any order about costs, as they were not referred to him. An application was then made to Mr. Justice *Bosanquet*, who tried the cause, to rescind the certificates for immediate execution. On that occasion the local act was brought expressly before him, and both parties were heard upon full affidavits; but the learned Judge decided that execution should go. That could only be on the assumption that the act did not apply to this case; and that was the learned Judge's opinion, after deliberation. No application was made to him for leave to enter a suggestion. [*Bayley*, B.—What au-

thority had Mr. Justice *Bosanquet* to enter a suggestion?] The whole matter was referred to him: a consent was given for immediate execution: execution did accordingly issue, and the money is in the hands of the sheriff. If his Lordship had no power to enter a suggestion, he had the power of preventing the defendant from coming here now, by allowing the plaintiff to get judgment forthwith, which he would not have done unless he thought the defendant was not entitled to relief under the local act; and therefore the defendant is now too late, for the defendant cannot apply to enter a suggestion after final judgment; that was the rule before the statute of 1 W. 4. c. 7, and is laid down in 2 Tidd, 961: citing *Barney v. Tubb*, 2 W. Bla. 354; *Dunster v. Day*, 8 East, 239; and *Calvert v. Everard*, 5 M. & S. 510. See also *Hippesley v. Laing*, 4 B. & C. 363, where it was held, that if the motion might have been made in Easter Term, it was too late to make it in Trinity Term, though final judgment was not signed. Under the second section of that act, the Judge at *nisi prius* has clearly jurisdiction to determine, under all the circumstances, when the plaintiff should have judgment*: the defendant applied to him to stay final judgment till this application was made: Mr. Justice *Bosanquet* entertains that application with reference to the Overing Court of Request Act, and he decides that he has no authority to prevent the plaintiff from having judgment. As soon as judgment is signed, this application cannot be made, for this is not an application under the fourth section, but under the old law; the fourth section does not authorize this motion, it only says—"Provided always, that notwithstanding any judgment signed or recorded, or execu-

* The 1 W. 4. c. 7. § 2, enacts, that in all actions it shall be lawful for the Judge before whom any issue joined in such action shall be tried, in case the plaintiff or demandant therein shall become nonsuit, or a verdict shall be given for the plaintiff or demandant, defendant or tenant, to certify under his hand, on the back of the record, at any time before the end of the sittings or assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification; and in case of a verdict for the plaintiff, then either for the whole or for any part of the sum found by such verdict; in all which cases a rule for judgment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith or afterwards, according to the terms of such certificate, on any day in vacation or term; and the *postea*, with such certificate as a part thereof, shall and may be entered of record as of the day on which the judgment shall be signed, although the writ of *distingas*, *juratores*, or *habeas corpora juratorum*, may not be returnable until after such day: Provided always, that it shall be lawful for the party entitled to such judgment to postpone the signing thereof.

tion issued by virtue of this act, it shall be lawful for the Court in which the action shall have been brought to order such judgment to be vacated, and execution to be stayed or set aside, and to enter an arrest of judgment, or grant a new trial, or new writ of inquiry, as justice may appear to require; and thereupon the party affected by such writ of execution, shall be restored to all that he may have lost thereby, in such manner, as upon the reversal of a judgment by writ of error, or otherwise, as the Court may think fit to direct." This Court, therefore, has no power to order a suggestion to be entered, for the defendant is too late.

Campbell, in support of the rule.—With respect to the first point, the finding of the jury is what the Courts have been always bound by. If the verdict stands, it is conclusive: the plaintiff should have moved to set aside the verdict. As to the act 1 W. 4, that statute was not intended to repeal all the Court of Conscience Acts, or to put it in the power of a single Judge to prevent the defendant from getting the benefit of them. The defendant can apply in the same term. The fourth section is in general terms, and says that the judgment may be vacated. This Court has power to order a suggestion to be entered. [He was then stopped by the Court.]

Bayley, B.—I am of opinion that this rule for entering a suggestion ought to be made absolute. The words of the local act are, that if any action for any debt under 5*l.* shall be commenced in any other Court, the plaintiff, though he gets a verdict, shall not have costs. That act authorizes suits for 5*l.*: here the verdict is only for 1*l.* 9*s.* 1*d.*: it was reduced to that sum by a set-off: the original sum being 4*l.* 1*s.* 1*d.* It has been held and acted upon in this Court, that the verdict is to be taken as the amount, otherwise we should have contradictory affidavits^b. But it is said that the

^b There are many authorities to this effect; *Weston v. Donnelly*, Sayer, 273; *Horn v. Hughes*, 8 East, 346; *Tronim v. Ostell*, 1 M. & S. 393; *Jordan v. Strong*, 5 M. & S. 196; *Shaddick v. Bennett*, 4 B. & C. 762; *Clark v. Askeu*, 8 East, 28; *Fountain v. Young*, 1 Taunt. 60; *Benson v. Heming*, Barnes, 353; *Parker v. Philpot*, 14 East, 343; *Butler v. Grubb*, Imp. K. B. 560, (3 ed.) B. R.; *Rothery v. Munnings*, 1 B. & Ad. 18, note (a). (*Harsant v. Larkin*, 1 Brod. & B. 257, is contra.) These are cases where, as in the principal case, the sum really due is found by verdict (independently of any set-off or tender) to be under the sum cognizable by the inferior Court; and it makes no difference that the plaintiff's claim is reduced by the absence of a witness. *Fitzpatrick v. Pickering*, 2 Wils. 68, where, as in *Rothery v. Munnings*, the plaintiff's bill (which was for 260*l.*) was reduced by the Statute of Limitations being held to apply to all except 1*l.*; the rule being, as stated by *Bayley*, B. *supra*, that the plaintiff's real claim is ascertained by what he *proves* to be due:

defendant is precluded by two circumstances: First, That he originally agreed that execution should issue on a day in August last; but he was not probably aware at that time of the provisions of the local act^c. If a man knows his rights, and with full knowledge acts, he is bound; but it would be too much to say that the defendant is concluded by that agreement. The second objection is, That Mr Justice *Bosanquet* has already decided upon this matter, because he would not have let execution issue if the local act had exonerated the defendant from costs. Was that within his jurisdiction? If you had referred to an arbitrator, he would have had power to decide upon the point, and even if he were wrong, both parties would be bound by his decision; but to a Judge you refer, in his judicial character, and therefore if he did decide, on an erroneous supposition that the act did not apply, we are not bound, and cannot be fettered. His was not the proper tribunal. But it is said, he having made an order, they who have suffered that order to stand are now too late to enter a suggestion; but I cannot put that construction on the act of 1 W. 4. c. 7. What was the evil before that act? Till that act the plaintiff was prevented from having execution till after the first four days of the next term: then the defendant had only four days to enter a suggestion, and it must have been made within that time; but here the defendant has come at the earliest time, to the only Court that could act, and this Court can give him the relief which he prays, notwithstanding the fourth section of 1 W. 4. c. 7. does not mention any thing about entering a suggestion, for the things specified in that section are only put as instances.

Bolland, B.—I think the clause in the 1st of W. 4. which has been relied on, is fully answered by the fact that this motion was made within the first four days of this term.

Gurney, B.—The present appears to me to be a case within the meaning of the local act of 47 G. 3.; but I do not say that the Court will not resort to other means than the verdict.

Rule absolute for entering a suggestion and for returning the money, and no action to be brought.—*Buddley v. Oliver*, November 22d, 1832. Excheq.

but where the claim is reduced by a set-off (*Pitts v. Carpenter*, 2 Str. 1191; 1 Wils. 19, S. C.; *Gross v. Fisher*, 3 Wils. 48), or by plea of tender (*Heward v. Hopkins*, Dougl. 448; *Waistell v. Atkinson*, 3 Bing. 289), to a sum below the amount recoverable in the inferior Court, the defendant cannot have a suggestion; but the mere fact of pleading a tender, is no waiver by the defendant of the benefit of the act, nor does it preclude him from having a suggestion where the sum recovered and the sum tendered do not together exceed the sum suable in the inferior Court. *Jordan v. Strong*, 5 M. & S. 196.

^c Ignorance of a local, as of a general act, we presume, can be no excuse. Ed.

SITTINGS IN CHANCERY.

COMMON PLEAS.

PETITIONS AND SEAL BEFORE HILARY TERM,
1833.

LORD CHANCELLOR.

At Lincoln's Inn.

Wednesday, Jan. 9th | Petitions.

Thursday, 10 | The Seal.

Hilary Term.—At Westminster.

Friday, 11 | Motions.

Saturday, 12 }
Monday, 14 } Appeals & Re-hearings.
Tuesday, 15 }
Wednesday, 16 }

Thursday, 17 | Motions.

Friday, 18 }
Saturday, 19 } Appeals & Re-hearings.
Monday, 21 }
Tuesday, 22 }
Wednesday, 23 }

Thursday, 24 | Motions.

Friday, 25 }
Saturday, 26 } Appeals & Re-hearings.
Monday, 28 }
Tuesday, 29 }

Wednesday, 30 { King Charles's Mar-
tyrdom.

Thursday, 31 | Motions.

VICE CHANCELLOR.

At Lincoln's Inn.

Wednesday, Jan. 9 | Petitions.

Thursday, 10 | The Seal.

Hilary Term.—At Westminster.

Friday, 11 | Motions.

Saturday, 12 }
Monday, 14 } Pleas, Demurrers, Ex-
Tuesday, 15 } ceptions, Causes, &
Wednesday, 16 } Further Directions.

Thursday, 17 | Motions.

Friday, 18 }
Saturday, 19 } Pleas, Demurrers, Ex-
Monday, 21 } ceptions, Causes, &
Tuesday, 22 } Further Directions.
Wednesday, 23 }

Thursday, 24 | Motions.

Friday, 25 }
Saturday, 26 } Pleas, Demurrers, Ex-
Monday, 28 } ceptions, Causes, &
Tuesday, 29 } Further Directions.

Wednesday, 30 | Short Causes & ditto.

Thursday, 31 { King Charles's Mar-
tyrdom.

Friday, 1 | Motions.

Sittings appointed in Middlesex and London,

Before the Right Honourable Sir Nicolas Co-
nyngham Tindal, Knt., Lord Chief Justice
of His Majesty's Court of Common Pleas at
Westminster, in and after Hilary Term,
1833.

IN TERM.

Middlesex.

London.

Wednesday, Jan. 16 | Friday, Jan. 18
Wednesday, 23 | Friday, 25
Wednesday, 30 |

AFTER TERM.

Middlesex.

London.

Friday, Feb. 1 | Saturday, Feb. 2

The Court will sit at eleven o'clock in the
forenoon on each of the days in Term; and at
half-past nine precisely on each of the days
after Term.

REDUCTION OF REMANET FEES.

*Office of the Marshal and Associate to
the Lord Chief Justice of the Court
of King's Bench.*

IT IS ORDERED, That in future the fees in
this office for making Special Jury and
Crown causes Remanets, in Middlesex and
London, shall only be respectively charged
once between each Sitting after Term, and
each following Sitting after Term.

All Common Jury Causes in Middlesex,
made Remanets, will be charged no more in
Term than once, whether brought down as
undefended or on the list every respective
day of Sitting.

In London, all Common Jury Causes will
be charged once only as Remanets, between
each Sitting after Term, and each following
Sitting after Term.

NOTES OF THE WEEK.

REDUCTION OF REMANET FEES.

THE official announcement of the reduction
of fees on Remanet Causes at Nisi Prius,
will be hailed by the practitioner as an
omen of the abolition of those exactions,
which draw heavily on his resources in the
first instance, and ultimately fall on the

suitor—deterring, on the one hand, the injured from seeking redress, and on the other inducing the abandonment of a good defence, from an alarm at the amount of the expense.

The Remanet Fees are now to be charged from term to term only, and not from sitting to sitting—even should the causes be entered in the list of the several sitting-days in Term. Reform is here proceeding from the right quarter—it is an unforced boon, and entitles the Lord Chief Justice to the warm acknowledgments of the Public and the Profession.

COUNTRY BANKRUPTCY COURTS.

It is stated in a Morning Paper, that the new mode of administering the Bankrupt Law in London will be extended to the large commercial towns:—that the senior London Commissioner will go to Liverpool, and the Chief Registrar to Bristol. Mr. W. Russell, it is said, will be the new London Commissioner, Mr. Gregg the Chief Registrar, and Mr. Parry succeed Mr. Gregg. We put no faith in this statement.

EXPENSES OF THE COURT OF CHANCERY.

In an article in the present Number, on the Funds in the Court of Chancery, will be found some details worthy of attention, in regard to the expenditure for carrying on the business of the several offices attached to that Court.

ANSWERS TO QUERIES.

Law of Property and Conveyancing.

DEVISE.—ENTAIL.—RECOVERY. P. 131.

The children of S. C. (the devisee for life) took estates tail, as tenants in common; with cross remainders between them in tail, in the devised property; and consequently the recovery suffered by John and Sarah, the surviving children of S. C. (with the concurrence of the husband of Sarah), effectually barred the issue of them both. It was not necessary for the trustees to join in making the tenant to the *præcipe* for suffering such recovery, even supposing they took the legal fee in the devised premises, because in that case it was perfectly competent for the devisees alone, as equitable tenants in tail, to suffer a common recovery for barring their equitable estates tail,

without the concurrence of the trustees of the legal fee. Both points are so clear, as to render it almost needless to cite authorities in support of my opinion; but as your correspondent seems anxious to have a reference to cases, I beg to call his attention to the well known rule in *Shelley's case*, on the first point; and to the cases of *North v. Champenown*, 2 Chan. Cases, 63; 71; *Beverley v. Beverley*, 2 Vernon, 131; and *Shapland v. Smith*, 1 Bro. Ch. Ca. 175, on the second point.

A copy of the record of the recovery in question may be obtained from the officer who had the custody of the Welch records prior to the passing of the 11 G. 4. and 1 W. 4. c. 90, with whom they are, by the 27th section of that statute, directed to remain until otherwise provided for by law. But your correspondent should be apprised, that he will derive no information from the record of the recovery, as to the parties to the recovery deed, who can only be known by an inspection of that instrument itself.

T. W. I.

DEVISE.—FREEHOLD. P. 147.

1. I am of opinion, that the testator's brother John takes the fee simple in the real estates, and the absolute interest in the leaseholds devised to him, by force of the word "*property*," which is sufficiently comprehensive to include both; and as to the former, to supersede over the case of a devise, the necessity for any words of inheritance. And assuming that the word "*property*" will pass freeholds, it follows, as a necessary consequence, that it will pass leaseholds, where there is nothing to be found in the will which indicates an intention to the contrary.

T. W. I.

2. I am of opinion, that (if there appears nothing in the will from which it may be presumed that the testator intended to use in a restricted sense the word "*property*") in the gift of A. to his brother John, will pass to him both the leasehold and freehold estates, and that he will take a fee in the freehold, as well as an absolute interest in the leasehold. *Roe d. Snell v. Pattison*, 16 East, 221; and *Morgan v. Morgan*, 6 Bar. & Cres. 512.

A. B.

Common Law.

CARRIER'S LIABILITY. P. 162.

I think that the statute 1 W. 4. applies only to parcels of above the value of 15*l.*, and consequently that the carrier would be liable for the loss or damage of any parcel under that value, notwithstanding he had given such notice as stated in the query, except the loss or damage was occasioned by the act of God.

A. B.

* See *Roe dem. Stilling v. Yead*, 2 Bos. & Pull. N. Rep. 214; and 2 Jarman's Powell on Devises, ch. 10.

State of Attorneys.

CERTIFICATE.—RE-ADMISSION. P. 147, 161.

G. R., in his answer to the query of H. S. S., has overlooked the decision of Chief Justice Gibbs, in *Ex parte Nicholas*, 6 Taunt. 408; where it was held, that an attorney who had not taken out his certificate for one year from his admission, must be re-admitted before he could practise. D. T. H.

QUERIES.

State of Property and Coheirship.

DEVISE.

A. devises a freehold estate to trustees, upon trust to pay rents to B. for life, and after B.'s decease, upon trust to sell, and to pay and divide the proceeds (after payment of his debts) unto and equally between C. and D. (if they shall be living at his decease), their executors, administrators, and assigns; but if either of them should die in his (*testator's*) lifetime, the share of the one dying to go to the survivor, her executors, administrators, and assigns. The will contains a proviso, that the shares of C. and D. shall not be subject to the debts, management, interference, or control of their husbands. A. dies, and afterwards C. dies, in the lifetime of B., leaving a husband and no children. B. is now dead; and the question is, who will be entitled to C.'s share of the proceeds of the sale of the estate? A.

Common Law.

HUSBAND AND WIFE.

A. directs the rents of an estate, and the interest of a sum of money, to be paid to B., a married lady, for her sole and separate use, and declares her receipt (notwithstanding coverture) a good discharge. A sum of money for rent and interest is paid to B. Is her husband entitled to the money, so soon as she gets possession of it? or has she the full control over it? A.

JUDGMENT CREDITOR.

A. purchases a farm and lands of B. B. is to pay the tenant, C., for the plowings, &c. and A. is let into possession, continuing C. as his tenant. C. had before the payment to him for plowings, &c., and still has, a judgment hanging over him, which was known to both A. and B. Would the sale by the tenant be held to be colorable, or the plowings and the crops arising therefrom be liable to the judgment creditor? G. R.

LIABILITY.—HIRED HORSE.

A. hired of B., a livery stable keeper, a horse and chaise for a day, to go into the country: by some accident the horse fell down, and broke the chaise and harness. Is A. liable to make good the damage? and if so, is it any defence to say that B. did not give A. a certificate of hiring? Also is B. liable to any, and what penalty, for not giving such certificate? F.

TIME BARGAIN.

A., having no money, buys 5000*l.* consols for the account, of B., who has the stock. Is this an illegal bargain, on the part of A.? A SUBSCRIBER.

State of Attorneys.

FEES OF ADMISSION.

I should feel greatly indebted to any of your correspondents who would inform me the fees "due and of right payable" by an attorney, on his admission to practise in the different courts of law and equity. A SUBSCRIBER.

MISCELLANEA.

THE PROCEEDINGS AND PRISON OF THE INQUISITION.

The most formidable of all the tribunals is that of the Inquisition, whose bare name strikes universal terror: I. Because the informer is admitted as a witness. II. As the persons impeached never know those who inform against them. III. As the witnesses are never confronted. Hence innocent people are daily seized, whose only crime is, that certain persons are bent upon their destruction.

When a person is once imprisoned by the inquisitors, his treatment is most cruel. He is thoroughly searched, to discover, if possible, any books or papers which will serve to convict him, or some instrument he may employ to put an end to his life, in order to escape the torture, &c. Of this there are but too many sad examples; and some prisoners have been so rash, as to dash their brains out against the wall, upon their being unprovided with scissars, a knife, a rope, &c.

After a prisoner has been carefully searched, and his money, papers, buckles, rings, &c. have been taken from him, he is conveyed to a dungeon, the bare sight of which must fill him with horror. Torn from his family and his friends, who are not allowed access to, or even to send him one consolatory letter; or to take the least step in his favour, in order to prove his innocence; he sees himself instantly abandoned to his inflexible judges, to his me-

lancholy, to his despair, and even often to his most inveterate enemies, quite uncertain of his fate.

On his arrival at the prison, the inquisitor, attended by the officers of this mock holy tribunal, goes to the prisoner's abode, and there causes an exact inventory to be taken of all his papers, effects, and of every thing found in his house. They frequently seize all the prisoner's other goods; at least the greatest part of them, to pay themselves the fine to which he may be sentenced; for very few escape the Inquisition without being half ruined.

The house of the Inquisition in Lisbon is a spacious edifice. There are four courts, each about forty feet square, round which are galleries (in the dormitory form) two stories high. In these galleries are the cells or prisons, being about three hundred. Those on the ground floor are allotted for the vilest of criminals (as they are termed), and are so many frightful dungeons, all of free-stone, arched, and very gloomy. The cells on the first floor are filled with persons considered less guilty; and women are commonly lodged in those of the second story: these several galleries are hidden from view, both within and without, by a wall above fifty feet high, and built a few feet distant from the cells, which darkens them exceedingly.

The furniture of these miserable dungeons is a straw bed, a blanket, sheets, and sometimes a mattress. The prisoner has likewise a frame of wood about six feet long, and three or four wide; this he lays on the ground, and spreads his bed upon it: he also has an earthen pan for washing himself; two pitchers, one for clean and the other for foul water; a plate, and a little vessel with oil to light his lamp: he is not, however, allowed any books, not even those of devotion.

Sometimes a prisoner passes several months in his cell, without hearing a single word of his being brought to trial; without his knowing the crime of which he stands impeached, or a single witness who swore against him: at last the gaoler tells him, as of his own accord, that it will be proper for him to sue to be admitted to audience.

THE EDITOR'S LETTER BOX.

We consider it convenient, under this head, to include, in future, such brief communications as cannot consistently with our plan form the subject of separate articles; and also to

comprise within it our Notices to Correspondents and Announcements to Readers. We are induced to make the latter alteration on account of our provincial friends, who—receiving the work in monthly parts—have no opportunity to see the acknowledgments which have been hitherto given on the covers of the Weekly Numbers; and some of them may be sufficiently material to preserve in the future Volumes of the Work.

The Monthly List, in the Supplement for December, of Law Works preparing for publication, we are aware, is incomplete, and so stated it. Authors and publishers are invited to supply accurate information in time for the Supplement of this Month. We shall expect the List to comprise Books intended to appear within a *reasonable* period: otherwise the announcements prevent more diligent writers from conferring benefit on the profession.

In answer to *An Articled Clerk*, who desires to know, "whether Articled Clerks are allowed to subscribe to the Law Institution, and if so on what terms," we refer to our previous Numbers, and recommend them to his notice. In the mean time we may inform him, that we understand such subscribers are not admissible. The Clerks of Members are entitled to the use of the Anti-Room, and to inspect the Books and Lists of Causes, and other Proceedings in the Courts; but cannot be admitted to the Hall. The terms on which Articled Clerks may be admitted to the intended Practical Lectures have not been settled; and their admission to study in the Library has not yet, we believe, been under consideration.

The Queries on the following subjects have been received: On the Eligibility of Quakers to sit in Parliament;—Limitations;—Recovery;—Liability for Breaking a Window;—Joint Note;—Receipt for Consideration Money.

We particularly thank "J. W." for his additional information.

The observations of *A Constant Reader*; *Z.*; *Fiat justitua*; and *Jacobus*, will be noticed next week.

The Memoir which we announced is now nearly ready. We waited for some further particulars, which have just been received.

The Legal Observer.

Vol. V.

SATURDAY, JANUARY 12, 1833.

No. CXIX.

———"Quid magis ad nos
Pertinet, et noscitur malum est, agiturus."

HORAT.

LETTERS TO THE LORD CHANCELLOR.

LETTER X.

ON HIS FUTURE CONDUCT.

My Lord,

It is the misfortune of men filling high situations in the state, that their actions and conduct are grossly misstated and vilified by one party, and over praised and magnified by the other. They can rarely hear the quiet voice of truth and impartiality. They almost necessarily live in an atmosphere of their own. If they smile, a responsive mirth diffuses itself over the faces of those they look upon: if they are mournful, a sympathetic grief saddens all around them. If they have weak minds, this state of things deceives and blinds them: if strong, it begets a general distrust;—they are apt to become careless of all opinion, for they know not on whom to rely; the constant exaggeration of their great and their little qualities begets a want of confidence in all that comes out of the human mouth; they become, to a certain extent, reckless of what is said; they trust too much to themselves; and in this state, deprived as they may be of all good advice, they commit actions or adopt measures ill conceived, ill arranged, and ruinous in their consequences.

Far be it from me to say, that your Lordship is thus situated! Nevertheless, your position seems to render such a state of things not impossible. Few men in this country ever possessed the power with which you are

clothed, or stood in a situation so eminent: it may, however, not be altogether unattended with a portion of the disadvantages to which I have alluded; and I am the more inclined to think this possible, as twelve hours have not elapsed since I have heard, under the same roof, from two coteries of different parties, opinions respecting your conduct, as contrasted as an angel from a fiend.

In the one, what words could express the admiration—the devotedness of your admirers. Your life had been made up of sacrifices to your country—of health, riches, and patronage. Your splendid talents; your varied acquirements; your unsullied integrity; your matchless consistency, alike eclipsed the fame of all preceding statesmen, and rendered doubtful the probability of the reproduction of such another. You had lived to convince the world that a man could be found who measured his means of benefiting his country only by his power: who united all the qualifications for blessing the human race: the qualities of whose mind were only equalled by those of his heart. Indeed, panygyric so lofty as that bestowed on your Lordship, would need a memory infinitely more glowing than mine, to retain or relate. I will not say, that the feelings of the gentlemen who bestowed it might have been warmed by some recollection of past favours, or by a lively anticipation of those to come, because I have heard nearly the same language in circles exclusively private, and entirely remote from any influence of that nature.

Whilst these praises, however, were still

ringing in my ears, it was my chance, in the same place, to fall in with another knot of persons, whose feelings were as strongly tinged by party as those I had left, but of another colour. How different, my Lord, was their tone and language.—From the commencement of your career to the latest hour of your existence you had manifested an utter want of principle: the means by which you had obtained office were only to be equalled by the conduct you had pursued since you had obtained it. One amongst this group was particularly vehement and sarcastic in his language. "If," said he, "the noble Lord's own declarations are to be trusted, I admit that few instances are to be found of so much self-sacrifice and magnanimity. He has repeatedly told the country, by means of the public reports of his speeches, that he is positively stripping himself of every thing which renders his office valuable, or even worth holding; that in less than two years he has done more for the benefit of the suitor than his predecessors have effected in centuries. The noble Lord has said this on every possible occasion, on the well known principle, that if a thing is repeated sufficiently often, it is at last generally believed,—just as one has been at last persuaded into the admission that Warren's Blacking is the very best in the world. I admit, then, that if we take the Chancellor's portrait as painted by himself, nothing can be so beautiful or deserving of praise; but unluckily, like other painters, he has managed to soften every defect and heighten every favourable point. As portrayed by himself, we are lost in admiration; 'if he be like this,' we exclaim, 'what a man have we got!' but when, alas! we compare the semblance with the original, we are almost scared by the difference."

Your late conduct was particularly dwelt upon. Passing over your measure respecting the New Bankrupt Court, which was asserted to be a mixture of jobbery and blunder, your more recent measures were thus perverted. "The Chancellor's great object," continued the gentleman who had already spoken, "has been to benefit himself, and spoil the office for all successors. Thus, having provided for both his brothers and all his other pets, he has very willingly done away with half a score of little offices, which he did not want, and which, in giving away, he must have displeased a great many more than he could possibly have pleased. Nevertheless, by the very act which is to save him all this useless trouble, he gives himself compensation

for the loss of a patronage that could only have been a burden to him, whatever it might be to his successor. He secures the large sum of 5000*l.* a year to himself for life, and positively makes it appear that he is an injured man all the while. His next measure is of the same character. By this, 14,000*l.* a year is settled on him during his continuance in office: and this he has also ingeniously endeavoured to persuade the country, is to his loss and disadvantage; whereas it is notorious that Lord Eldon and Lord Lyndhurst frequently received much less. Another plan of his Lordship's is, by every means in his power, to strip his office of its duties. Thus he has managed already to get rid of his bankruptcy business; he lessens his own labour and responsibility by frequently calling in the assistance of other Judges; and if his notable Chancery nostrum is thrust down our throats, he will rid himself of at least two thirds of his remaining work. And whilst all this is doing, he is constantly declaring, in public and in private, and getting it declared every where for him, that he is stripping himself of all that is valuable in his office; doing its duties for next to nothing; and suffering a thorough political martyrdom."

Now, my Lord, so different are the opinions entertained of your conduct and motives! And that the truth lies between the two, what reasonable and disinterested men can doubt; but at the same time how few is the number of these last. Permit me, then, in stating what I hear, and avowing myself an ardent, but I trust, unprejudiced admirer and well-wisher of your Lordship, to warn you of the danger which you incur in bringing in any measures of reform in the law; being sure of their meeting the ready and unqualified approbation of one party, and the certain opposition of the other. Let me express a hope that they will secure the approval of those who are of no party, by their moderation, their answering the real object intended, and no other; and their remedying true and admitted defects: and that however you may be flattered by one set, and goaded by another, you will have constantly before you the honour and character of the profession of which you are the head.

I have the honor to be,

My Lord,

Your Lordship's most obedient servant,

A BARRISTER.

Lincoln's Inn, Jan. 9, 1833.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1831—1832.

No. XIV.

We shall now point out some further alterations which have been lately made in the Law.

Chancery Reform.—There are two Acts connected with Chancery Reform, which were passed in the last session of Parliament. The first of these is the 2 & 3 W. 4. c. 111, which enacts, that the offices of Clerk of the Hanaper, Patentee of the Subpoena Office, Registrar of Affidavits, Clerk of the Crown in Chancery, Clerk of the Patents, Clerk of the Custodies of Lunatics, the Prothonotary of the Court of Chancery, the Chaff-Wax, the Sealer, the Clerk of the Presentations, the Clerk of Inrollments in Bankruptcy, the Clerk of Dispensations and Faculties, and the Patentee of Bankrupts, shall be abolished from and after the 20th of August, 1833 (§ 1); but persons appointed before the 1st day of June last, are still to continue to hold them until their decease or resignation (§ 2). These offices are sinecures, and were in the gift of the Lord Chancellor; and as a compensation for the deprivation of the patronage, it is enacted that on the resignation of his office he shall receive 5000*l.* instead of 4000*l.*, which he enjoyed previous to the Act (§ 3).

The other Act is the 2 & 3 W. 4. c. 122, of which we have already given a very full analysis^a. It provides that 158,000*l.* should be carried to the fund for the benefit of the Suitors of the Court of Chancery (§ 1), with power to charge securities (§ 2); and the money placed out is to be called in, if required for answering the demands of suitors (§ 3). By § 4, so much of 53 G. 3. c. 24, as relates to payments to be made by the Bank, and by the Lord Chancellor and the Vice-Chancellor, is repealed; and it is enacted (§ 5), that from the 11th of April last, 10,000*l.* per annum is to be paid out of the Suitors' Fund to the Lord Chancellor, in lieu of all fees, which, whether paid to the Lord Chancellor or any of his officers, are to cease (§§ 8, 11, and 13); and the officers are to receive annuities in their stead (§§ 8 and 9).

The Speaker of the House of Commons.—There were two Acts passed in the last ses-

sion of Parliament, relating to the Speaker. By the one (2 & 3 W. 4. c. 105), he is in future to receive a yearly sum of 6000*l.* out of the consolidated fund, in lieu of all fees; and it is expressly provided that he shall hold no office under the Crown. By the other (2 & 3 W. 4. c. 109), an annuity of 4000*l.* is settled on the distinguished person lately holding that office (Mr. Manners Sutton), which is to be payable for his life, and his heir male is to enjoy an annuity of 3000*l.* for his life; but it is provided that if Mr. Sutton accepts office, one-half of the annuity of 4000*l.* is to cease; and that if his heir male should succeed to the office of Registrar of the Prerogative Court of the Archbishop of Canterbury, and the fees thereof exceed the amount of 3000*l.*, the annuity of 3000*l.* shall cease; but if the fees shall be under that amount, so much of the annuity shall be paid as shall make up that sum.

Salaries of Judges, &c.—By the 2 & 3 W. 4. c. 116, certain provisions are made respecting the salaries of the Judges of England and Ireland. It is enacted that the Chief Justice of the King's Bench shall receive 10,000*l.* per annum^b; the Chief Justice of the Common Pleas, 8000*l.*; the Chief Baron of the Exchequer, 7000*l.*; each of the Puisne Judges and Barons of these Courts, appointed *before* the 16th of November, 1828, 5500*l.*; those *after* that time, 5000*l.*; the Cursitor Baron, 243*l.*; the Vice-Chancellor, 6000*l.*; the Lord Chancellor of Ireland, 8000*l.*; the Chief Justice of the King's Bench in Dublin, 5074*l.* 9*s.* 4*d.*; the Chief Justice of the Common Pleas in Dublin, 4612*l.* 18*s.* 8*d.*; the Chief Baron of the Exchequer in Dublin, 4612*l.* 18*s.* 8*d.*; the Second Justice of the King's Bench in Dublin, 3725*l.* 19*s.* 4*d.*; and each of the other Puisne Judges of the King's Bench, Common Pleas, and Exchequer, in Dublin, 3688*l.* 12*s.* 4*d.*; the Judge of the Admiralty Court in Dublin, 500*l.*: all which salaries are to be chargeable on the consolidated fund, and are to be received in lieu of all salaries and all fees, except the fees payable to the *present* Cursitor Baron; and it is provided that the fees heretofore received by any of the said Judges are henceforth to be paid into the Exchequer.

Court of Sessions, Scotland.—It is rather

^b It is understood that the present Chief Justice has accepted the office with a salary of 8000*l.* per annum.

singular that no provision was made by the Law of Scotland for carrying on the business of the Court of Sessions in the event of the death, sickness, or necessary absence of the Judges either of the outer or inner house; but henceforth, by the 2 W. 4. c. 5,^c it is provided, that in such case the Judges of the Court, or a quorum thereof, may make the necessary regulations; and where the Judges of the inner house are reduced below a quorum, they may call in one of the Lords Ordinary to assist them.

Court of Exchequer.—By the 2 W. 4. c. 54, the Court of Exchequer in Scotland is abolished, it being provided that on the retirement or death of the present Barons, no successors shall be appointed; and that after the retirement or death of the last surviving Judge, the discharge of their duties shall devolve on a Judge of the Court of Session, who is to have an additional salary of 600*l.* a-year, as a remuneration for the additional labour. An annuity of 2000*l.* is settled on the late Chief Baron (the Right Hon. J. Abercrombie), and of 1500*l.* on the other Barons.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XXXIX.

JOINT ORDER.

If two persons who are not in partnership give a joint order for one parcel of goods, this may make them either jointly or severally responsible to the person supplying it, according to the particular circumstances of the case. Under the following circumstances a separate liability only was established.

"The question (said *Tindal*, C. J.) is, whether the wheat was sold to the defendants upon a joint contract; that is, whether, upon the correspondence and other facts set out in the case, the defendants gave the plaintiffs reason to understand and believe that they had the joint security of both defendants for the whole cargo; or whether the fair inference to be drawn by any reasonable men,—and if so the plaintiffs must be taken to have drawn such inference themselves,—was not that each of the defendants contracted separately for his moiety of the joint cargo. And upon looking

at the whole of the correspondence and other circumstances of the case, the latter appears to us to be the proper conclusion. That there are some expressions in the letters which, if taken separately, raise an ambiguity, must be admitted; unless such had occurred, no dispute or question could have arisen; but we think the preponderance very great in favour of the construction, that the contract of sale was separate and not joint. The plaintiffs rely on the original order being signed by both the defendants, and that the defendants are informed in reply that a purchase has been made on their joint account. This is the strongest expression in favour of the plaintiff's construction. But, on the other hand, the original order itself states, that 'payment for the same is to be drawn upon each of the defendants,' which imports more clearly a separation of interest and of liability; and the further fact, that the plaintiffs on each occasion draw a bill for one moiety of the price on one, and for the other moiety on the other defendant,—a circumstance by no means usual in a joint contract,—leads to the same conclusion. Why should the plaintiff's agent, on transmitting the order, give information of the solvency of the defendant Wood, who was before a stranger to them, if the defendant Lupton, who had dealt with them before, was liable to the whole of the demand? The very form of the address of each letter to each defendant, with his separate place of abode, the form of the invoice, and the indorsement of the bill of lading by each defendant separately, agree with the supposition that the contract was several, not joint. The proposal to the plaintiffs by the defendant Lupton, in his letter of the 13th of February, that the plaintiffs should re-sell, in which he states that he has not altogether the authority of Wood, whom in that letter he calls his 'Co,' but in the letter of the 11th of May, calls 'the half owner,'—all point to separate interests in the distinct moieties. In the plaintiff's letter of the 20th of February, to both the defendants, the expression occurs, 'we hold you both perfectly harmless for the advances up to the period of the bill of lading;' an expression more compatible with the supposition that the plaintiffs were treating with the defendants separately, than as jointly liable. It is from these, and some other expressions of a similar nature, that we infer the defendants purchased each of them a moiety of the cargo by the order, and that the plaintiffs must have known such to be the fact; and as this is the conclusion to which we think the jury ought to have arrived upon this statement of facts, we direct the *postea* to be delivered to the defendants."

Judgment for the defendants.—*Gibson v. Lupton*, 9 Bing. 303. See also *Wagh v. Carver*, 2 H. B. 235; *Hesketh v. Blanchard*, 4 East, 144; and *Anderson v. Martindale*, 1 East, 497.

REMARKABLE TRIALS.

No. XXI.

CASE OF JAMES LE BRUN, FOR SUPPOSED MURDER. 1699.

THE deceased Madame Mazel had passed the meridian of life, and was possessed of an affluent fortune. Her servants were two footmen; an old female cook, a coachman, two young women, and James le Brun, who had lived with her twenty-nine years, and who was her butler. A man called the Abbé Poulard lived with her on a footing of intimacy, which did no honour to her reputation. Some time before the death of Madame Mazel, she had taken a master-key from Le Brun, which opened all the doors, in order to accommodate with it the Abbé Poulard; Le Brun had another, which he continued to use. On the 27th of November, 1699, being the first Sunday in Advent, the two daughters of Le Brun went in the afternoon to pay their respects to Madame Mazel: she was then going to vespers at the convent of Prémentré, rue Haute-bruille; for she was ever remarkably pious in the exercises of religion. She left her house attended by Le Brun, on whose arm she leaned, and the two footmen followed her. As soon as she was in the chapel, Le Brun quitted her, and went to hear vespers himself at the Jacobins, rue St. Jacques. Madame Mazel supped, according to her usual custom, with the Abbé Poulard, tête-à-tête. At eleven o'clock she went to her chamber. The maid, as was her usual custom, put the key on the chair, after which they all quitted the room; and Le Brun, who went last, drew the door after him, and shut it. He then went into the kitchen to take the key of the outward door to lock it: he took it off the hook, but, finding himself cold, he laid it down on the table, while he warmed himself; and being fatigued, possibly too having drunk more than he was accustomed to, he insensibly fell asleep: when he awoke, he heard the clock strike one. He ran up to lock the outward door, (which he was surprised to find wide open,) and, when he had done so, took the key with him into his room.

Madame Mazel usually arose at seven, and the servants expressed to each other their wonder that she had not rang her bell at eight o'clock. Le Brun went for a moment to see his wife; to whom he gave seven louis and some other money, which he bade her lock up; and, then returning home, enquired if Madame was yet up? and being told she was not, he expressed great surprise and uneasiness. The whole family now determined to endeavour to awaken her, and went to the door and rapped loudly; but all was silent. Some said she had fallen into an apoplexy; others, that a bleeding at the nose, to which she was subject, had destroyed her; but Le Brun remarked, that it must be worse,—“Something,”

said he, “is wrong; I am very uneasy, because I found the street door open last night.”

The room being at length opened, the people who were assembled, entered; Le Brun went hastily to his mistress's bed;—she was assassinated, and covered with blood. Monsieur de Savonnières, her eldest son, sent for the Lieutenant Criminal Deffits. He laid a complaint in his own name, and that of his two brothers; and surgeons were sent for to examine the body. About fifty small wounds, made with a knife, were found on her hands, face, shoulders, and throat; and these last, having occasioned a great effusion of blood, had been the occasion of her death; for none of the wounds were of themselves mortal. In the bed was found a piece of a lace neckcloth, and a towel twisted up in the form of a night-cap, which towel belonged to the house, and was marked with an S. The cords of the bells were twisted up above the reach of the hand, and tied to the curtain rod.

In the ashes was found a knife, seven or eight inches long, the handle of which had been of tortoise shell, but was nearly burnt. The key of the chamber-door was not found on the seat, where the waiting woman affirmed she had put it; no door was broken; and the two doors which opened to the back stairs, were both shut and hooked withinside. The key of the press was found under the bolster, where it was always placed: on opening this press, the purse, in which Madame Mazel kept her card money, was found, containing about two hundred and seventy-eight livres, in gold. The key of the strong box was in the same place; and in it were found four sacks, each containing a thousand livres, and many other bags, containing different sums, one of which was labelled, “This is the property of the Abbé Poulard.” Under one sack was a purse, which was empty, and a red leather writing-box, which contained all the jewels of Madame Mazel, to the value of fifteen thousand livres. In her pocket were eighteen pistoles, in gold. From all which circumstances, it appeared as if those who had committed the cruel deed, had done it from some other motive than robbery.

The Lieutenant Criminal questioned the two women who attended on Madame Mazel, who related to him, succinctly, what had passed the night before. Le Brun was next called upon; who gave, with equal clearness, an account of every thing that had happened to himself, from the time of his going out with his mistress to vespers, to the moment of his examination. He was searched, and there was found on him the key of the hall where his pantry was; and a master-key with very large wards, which, on trial, was found to open the door of Madame Mazel's chamber; upon which the Lieutenant Criminal ordered him into custody. On putting on the napkin, it was found too little for his head: they examined his hands, but there were no signs of blood upon them, or his clothes; nor was there on any part of his person, any marks of that resistance, which it was very evident the

unfortunate victim had made against the ruffian who had killed her; some of whose hair she had torn off, and held in her hand.

Le Brun was again examined in prison, and neither on his person nor in his answers was there found the least cause to believe him the guilty person. They then examined the lodging of his wife, where nothing was found to criminate him; however, they seized on his linen, to compare it with a shirt, which was found stained with blood in the garret, hid under some straw (and which evidently belonged to the assassin), and with the lace neckcloth. The two women declared, that this neckcloth never had belonged to Le Brun; but said, they remembered having washed it for a servant called Berry, who had been dismissed from the service of Madam Mazel about four months before, because he was detected in robbing her. No similitude was found between the shirt and those belonging to Le Brun; nor, in any enquiry that was made, did the slightest circumstance arise, that tended to fix the charge on him.

On the 14th of January, 1699, Monsieur de Savonnieres presented a request to the Lieutenant Criminal in his own name, and that of his two brothers, demanding that Le Brun should be declared duly convicted of having assassinated Madam Mazel, and of having robbed her of a quantity of gold coin that was in her strong box; and that he should, at the same time, be deprived and declared unworthy of the legacy left him by the deceased:—and it appeared too certain, that this legacy was the real source of all the enmity of the Messrs. de Savonnieres against the unfortunate Le Brun.

Monsieur d'Aucour, who was employed in favour of Le Brun, shewed that it was impossible Le Brun could be guilty: for she had received above fifty wounds, and had evidently made great resistance; but Le Brun had not even the smallest scratch on his hands, or spot of blood on his clothes: the towel, twisted up like a cap, was so much less than his head, that he could not put it on:—the knife was not his;—the neckcloth was known to belong to another person;—the shirt was not like any he possessed; it was unlike, not only in quality, but in size, and was made for a little man; whereas Le Brun was tall and robust.—But why was not enquiry made after Berry? Berry, who before robbed Madam Mazel, and was dismissed in disgrace; who was known to be an infamous wretch, capable of any mischief—to whom the neckcloth was known to belong; who was seen at Paris about the time the event happened; and had been seen since with money, which he could not have honestly obtained? Why is no notice taken of the Abbé Poulard, an equivocal character at best; a priest, who, after being in two orders, actually belongs to none?—who had access at all hours to the house of Madam Mazel, and who was seen go in at midnight, the time the murder was committed; and who had an interest in the death of his benefactress, which Le Brun had not.

The counsel on the other side laid the great-

est stress on the circumstance of the key; on what Le Brun said, when questioned by M. de Savonnieres, “this is not apoplexy, but something worse;” and on the seven louis given to his wife to lock up, which they pretended to believe was part of the money taken from Madam Mazel.

Notwithstanding this defence, and that the prosecutors could bring no one positive proof against him, nor even presumptive evidence, which applied specially to him, yet the master-key in his possession, which opened all the doors, determined the judges to condemn him. Of eleven judges, two declared they required further information; two voted that he might be put to torture; and six condemned him to death, and that in the most cruel manner that could be devised.

On the 22d of February, sentence was passed by twenty-two judges; two only of which number demanded further enquiry; and the other twenty decided for the torture, ordinary and extraordinary. The unhappy man was in consequence put to this dreadful trial; but amid the most cruel tortures persisted in declaring his innocence. On the 27th, the same number of judges being again assembled, two voted that he should be sent to the galleys for life; but the rest voted for an adjourned inquiry of twelve months; during which, Le Brun was to remain in prison, and his wife to be at liberty. Le Brun, who had been kept in a dungeon, without being suffered to see any one but the jailer, was now allowed to have his wife, children, and friends. But this alleviation came too late: for the violence of the torture had so reduced him, though a very athletic and healthy man of forty-five, that his wife had time only to procure him the administration of the sacraments. As he received them, he again solemnly protested his innocence, and expired, amidst the despair of his wife and children, and the regret of all who had known him.

Information was soon after given to the magistrate of Sens, that a man named Gerlat, otherwise Berry, had established himself there as a dealer in horses, and without any visible means by which he could acquire money to support such a traffic. In consequence of which, he was arrested; and upon him was found a watch, which was known to belong to Madam Mazel. Process was instantly commenced against him, and witnesses examined. Some swore they had seen him at Paris at the time of the assassination. A woman swore she saw him come out of the house after midnight, on the night it was committed: a barber deposed, that he had shaved him the next day; and having observed scratches and wounds on his hands, Berry had told him that they were made by a cat, which he had attempted to kill. The shirt and the neckcloth were proved to be his, by comparing them with those found upon him.

Berry was put to the torture, when he confessed that he concealed himself in the garret of the house, from the Friday to the Sunday, feeding on bread and apples, which he had put into his pocket: that on Sunday morning, when

Madame Mazel went to mass, he went down into her chamber, and crept under the bed, where he lay some time: that after dinner, when Madame Mazel was gone to vespers, he warmed himself at the fire, and, finding his hat troublesome, made a night-cap of a towel; tied up the bell cords, and staid at the fire till he heard the coach enter the court-yard; then getting again under the bed, he remained there till Madame Mazel had been in bed near an hour; then he shewed himself, and asked her for her money, but on her screaming out, he told her, if she cried out he would kill her; and upon her still continuing to do so, and attempting to ring the bells, he struck her with a knife; that she defended herself for some time, but her strength failing, he continued to stab her till she died: that he then lighted a candle, and took from the bolster the key of the press, from whence he took that of the strong box, and took all the gold, which amounted to about six thousand livres: that he placed the key where it was before, and, it being then moonlight, he took his hat, and leaving the towel and his neckcloth, he knew not where, he ascended to the garret, where he took off his shirt, and putting on his coat and waistcoat, went down to the street-door, and, finding it unlocked, made his escape. Berry was broke on the wheel: and the memory of Le Brun was declared free from any stain.

SELECTIONS FROM CORRESPONDENCE.

No. XVI.

EDUCATION OF ATTORNEYS.

To the Editor of the Legal Observer.

Sir,

As a friend of one of the students attending the Law Lectures at King's College, in the course of his education as an attorney, (and of whom honourable mention has been made by Professor Park) and being myself an attorney, I have been led to reflect on the opportunity which the two London Universities offer for increasing the respectability of this branch of the profession. It is true that the professional education of an attorney of respectability is already very expensive. It is also true, that in their usual course of business, attorneys are entrusted with the sole management of affairs of the greatest importance to individuals and to society. Yet attorneys, *as a body*, do not hold that station in the world's esteem to which they are entitled. Their present uncertain mode of education, probably, may in some degree account for this general disesteem. How then is it to be removed? In my opinion, in an easy manner, through the medium of the London Universities.

On the completion of their articles of clerkship, respectable young men usually spend one or two years in London, in the chambers of conveyancers and special pleaders. This time

would afford, without much additional expense, sufficient opportunity for attending several courses of law lectures at one of the Universities. The student might be required to pass a public examination in the Senate-house, and finally to obtain a certificate of approbation from the Professor. Let the admission of attorneys depend upon these preliminaries, and it may, with confidence be expected, that the emulation excited by such plan of study would lead to higher attainments than those necessary to confer the bare right to claim admission. Would it, I ask, be unreasonable, that this extent of legal education should entitle young men to a degree in law, to [be conferred by either of the Universities? If not, I think the ulterior object might thus be obtained. The respectability of the body of attorneys, as regards professional knowledge, would also be permanently secured. G. W..

[The Law Institution, or Incorporated Law Society, is designed to facilitate the acquisition of legal knowledge, and no doubt will ultimately secure the important advantages pointed out by our correspondent. In the mean time, the Law Lectures at the London University and King's College, are well adapted to effect some of the objects in view; but there should be an examination in practical knowledge, as well as learned attainments, and this perhaps will be best effected by the Law Society. Ed.]

PRETENDED ATTORNEYS.

Sir,

Having read in the Legal Observer of last week, a letter, signed "Y.," I am induced to trouble you with the following statement.

A friend of mine was applied to a short time back by a person (whose name and address I send to you) for payment of a debt, together with 6s. 8d., costs of the application. I waited upon him to arrange the matter, when he proposed to take a warrant of attorney at six weeks, and for which *his* costs, as he stated, would be two guineas down. This I rejected: and it was ultimately agreed half the debt should be paid down, and the remainder in a fortnight. Suspecting him not to be entitled to make a charge for costs, I obtained from him a receipt for the 6s. 8d., and in which he specified the same to be for *letters and attendances* (thus clearly making an attorney's charge). In consequence of an intimation by my friend (when he settled the balance of his debt) to the person in question, that he was not an attorney, the latter called upon him, and, after a bungling story, confessed he was *only a clerk*, and went so far as to offer my friend money to keep the matter secret, which offer he spurned with indignation. Independently of the man's own confession, the roll has been searched, and his name does not appear on record. I shall leave you to judge what punishment a man deserves who endea-

vours to entail disgrace upon the profession by which he obtains a livelihood; and I most cordially agree with the concluding observation of your correspondent "Y," that these things are more frequent than the profession at large is inclined to suppose. G. H. B.

I have the receipt in my possession, and can produce it if necessary.

FEEs ON ADMISSION OF ATTORNEYS.

[We have received the following answer to a quære on this subject, at p. 125.]

Sir,

In compliance with the request of your correspondent "A Subscriber," I have taken some pains to procure a list of the *exact sums paid* as fees, &c. by two friends of mine, on their admission to practise in the several Courts, in the years 1825 and 1829. They are as under. Whether the whole of the fees are "due, and of right payable," some abler correspondent than I must inform him. H.

	Fees paid in 1825.				Fees paid in 1829.		
	£.	s.	d.		£.	s.	d.
3 affidavit stamps . . .	0	7	9	..	0	8	0
Admission, stamp & parchment . . .	25	1	0	..	25	0	0
Affidavit of due execution . . .	0	10	6	..	0	10	0
Swearing affidavits in King's Bench . . .	0	8	0	..	0	8	0
Judge's clerk for fiat . . .	1	1	0	..	1	1	0
Entering on roll . . .	0	10	6	..	0	10	0
Swearing, C. P. . . .	0	3	0	..	0	2	0
Gown	0	1	0	..	0	1	0
Fiat	1	1	0	..	1	1	0
Entering on roll . . .	1	0	0	..	1	0	0
Putting up notices . . .	0	0	6	..	0	0	6
To T. & R.'s clerk . . .	0	5	0	..	0	15	0
To secondary on taking admission away . . .	1	0	0	..	1	0	0
For certificates and entering	4	1	0	..	4	1	0
Entering admission . . .	0	3	6	..	0	3	6
Swearing in K. B. for commission . . .	0	2	0	..	0	2	0
Affidavit stamp . . .	0	0	0	..	0	2	8
Chancery admission . . .	1	17	6	..	1	18	6
Form	0	0	6	..	0	0	0
Chancellor's fiat for Master extra . . .	5	15	6	..	5	15	6
Dedimus potestatem . . .	2	12	0	..	2	15	6
Filing dedimus . . .	0	0	0	..	0	5	0
Commission to take affidavits in Exchequer	1	14	6	..	1	15	0
Commission to take affidavits in C. P. . .	1	15	0	..	1	15	0
Commission to take affidavits in K. B. . .	1	14	0	..	1	14	6
Affidavit stamp . . .	0	2	7	..	0	2	7
Advertisement	0	11	6	..	0	11	6
Gazette	0	2	9	..	0	2	9
Total amount of fees, &c. . .	£51	18	10		£52	15	8

MEMOIR OF WILLIAM BRAY, Esq.

THIS venerable individual, who has for many years been looked up to, especially by attorneys and solicitors, as the father of the legal profession, died at his house at Shere, in Surry, on the 21st of December, 1832, having early in the preceding month of November entered his ninety-seventh year, in the full enjoyment of his mental faculties.

He was a younger son of Edward Bray, Esq., of Tower Hill, in Shere, and received his education at Rugby. At the age of sixteen years, having lost his father, and being very slenderly provided for, he was placed in the office of Mr. Martyr, the principal attorney at Guildford. Shortly after Mr. Bray had commenced business, he obtained, through the kindness of the Evelyn family, a situation at the Board of Green Cloth at St. James's, which did not prevent his following his professional pursuits, and was the means of introducing him to many persons of distinction, whose acquaintance he continued during his unusually long career of practice.

His strict attention to the duties of his profession did not hinder him from devoting a considerable portion of his time to literary and antiquarian pursuits, for which he always shewed a decided predilection. Having previously, for a series of years, been a Fellow of the Society of Antiquaries, and one of its frequent contributors, he received, in the year 1803, the honorable distinction of being elected its Treasurer.

Two years prior to this event, upon the death of the Rev. Owen Manning, who had begun to compile the history of the county of Surry, Mr. Bray, on behalf of the widow of that reverend gentleman, undertook to complete and render fit for publication the work, which he had left in a very imperfect and unarranged state. Mr. Bray, then in his 66th year, zealously entered upon this arduous labour, and had the satisfaction of perfecting the history of his native county, in three folio volumes; the first of which was published in the year 1804, the second in 1809, and the concluding volume in 1814; at which latter time he was in his 78th year, and might reasonably have been expected to close his literary labours. This, however, was not so; for within the two subsequent years, he edited the well-known Memoirs of John Evelyn, the excellent and amiable author of the *Sylva*; and every one of our readers acquainted with those me-

moirs, will, we are convinced, acknowledge their debt of gratitude to Mr. Bray, for having brought to light so large a mass of matter, not less entertaining than instructive; and it may be interesting to them to be informed, that such was his anxiety, then on the verge of fourscore, to see these volumes pass through the press, that he constantly rose at four o'clock in the morning, throughout the whole of one summer, to transcribe and complete the work*.

On the death of his elder brother, the Rev. George Bray, Mr. Bray succeeded to the manors of Shere and Gunshall, situate about midway between Guildford and Dorking, which had been in his family for three centuries. To Shere Mr. Bray, about six years ago, then being upwards of ninety years old, retired altogether; but he still continued to occupy himself with literary and antiquarian avocations, and occasionally gave attention to professional business. He lived throughout life in the most unostentatious manner; but it is supposed he did not amass a large fortune.

Mr. Bray, at his decease, was not only the father of one branch of his own profession, but also of the Amicable and Equitable Assurance Societies; for which latter wealthy and flourishing establishment he long acted as solicitor, and for some years, and till within a recent period, had a seat in its direction. He likewise filled the honorable appointment of solicitor to the Trustees of the British Museum.

To an extensive knowledge of his profession, Mr. Bray added the most unblemished integrity and conciliating manners, which gained and secured him the esteem of all who knew him, and more particularly of his professional brethren; and we cannot adduce a more pleasing instance of the interest he took in their welfare to the end of his existence, than by presenting to our readers a copy of a letter, of which the original is wholly in his own handwriting, and by which he notified his very liberal donation to the Law Institution (now the Law Society of the United Kingdom, incorporated by Charter of his present Ma-

esty, King William the Fourth), of three large folio volumes, comprising his History of the County of Surry. The letter is as follows:—

"Shere, near Guildford, 3d March, 1832.

"Sir,

"As it is intended that Topographical History should have a place in the Library of the Law Institution, it is my wish, as a mark of respect and good wishes for so laudable an Institution, to present them with a copy of the History of Surry, in three volumes folio, began by the late Rev. Owen Manning, and completed by me. My grandson, Mr. Reginald Bray, will forward the books on receiving your directions.

"I am, Sir,

"Your most obedient servant,

"WILLIAM BRAY,

"Æt. 96."

*"To the Secretary of the
"Law Institution."*

The family of Bray is of remote antiquity, having originally settled in England at the time of the Conquest. Their pedigree is clearly deduced from about the reign of Henry the First, down to Sir Reginald Bray, K. G., who was mainly instrumental in terminating the wars of York and Lancaster, by the union of Henry the Seventh with the Princess Elizabeth; and by that monarch had granted to him, on the attainder of the then Lord Audley, the manors of Shere and Gunshall, with other property in the same district. Sir Reginald was no less celebrated for his refined taste and munificence than for his ministerial talents. By his will, he bequeathed his estates to his nephew, Edmund Bray, who, in the reign of Henry the Eighth, was summoned to Parliament as first Lord Bray, and who conveyed the manors of Shere and Gunshall to his brother, Sir Edward Bray, from whom Mr. Bray, who is the subject of our present memoir, was lineally descended; but on the death of the second Lord Bray, son of the first Lord, without issue, the barony fell in abeyance amongst his sisters, and so remains amongst their descendants at this time.

SUPERIOR COURTS.

Court of Chancery.

CONTEMPT.

A party obtaining an ex parte order of this Court, avowedly for a legitimate object, but in reality using it by publishing it in handbills, to the injury of his adversary's credit

* In editing the Memoirs of Evelyn, Mr. Upcott, the distinguished Librarian of the London Institution, rendered great service to Mr. Bray. It may be here mentioned, that the story, which has found its way into print, of the discovery of the MSS. by means of a thread-paper, is entirely fabulous. Lady Evelyn was sensible of their value before Mr. Upcott was introduced by Mr. Bray to arrange the books and MSS. at Wotton.

and reputation, is liable not only to be indicted or sued by action at law for the libel, but also to be punished summarily by this Court, for contempt of its authority. But if the party in publishing the order is actuated only by the sincere motive to give it effect, he is not within the rule laid down by this Court with regard to contempt.

Sir Edward Sugden moved for an order to commit to the Fleet Prison Mr. Benjamin Powis, one of the plaintiffs in this suit, and Messrs. Kearsey and Hughes, his solicitors, for a contempt of court. An injunction was granted during the last vacation, upon an *ex parte* application on behalf of the plaintiffs, to restrain the defendants in the suit from disposing of any goods that might come to their hands from the house of Hunter, Watts, and Co., of Singapore, or from parting with the bills of lading of any such goods, or raising any money upon the same. Mr. Powis and his solicitors, immediately after this order was issued, caused a handbill to be printed reciting the order of the Court, and cautioning merchants and brokers, and all others, from buying any goods coming from the East Indies, from James Hunter or William Phillips (the defendants), or dealing with them in respect of any such goods or the bills of lading thereof, until they should have first ascertained to whom they belonged. Copies of this printed handbill were sent round to the warehouses and offices of the merchants and brokers of London, and two of them were posted up conspicuously in the Commercial Coffee Room in Mincing Lane, upon two black boards, on which were usually posted notices of swindling transactions. This coffee room was the resort of merchants and brokers; and the publication of this libel there and elsewhere, was most injurious to the defendants,—holding them up as persons with whom it would not be safe to deal, and putting them on a level with swindlers. It was also interfering with the authority of this Court, which has power to enforce its own orders, and which will not permit parties to make an *ex parte* proceeding the grounds of a libellous publication.

The Lord Chancellor.—This handbill may be a libel, and the party complaining may have his remedy in another Court; but is it a contempt of this Court? Will you satisfy me that the injunction was obtained for the sinister purpose of making it a ground of libel on the defendants in the suit, and not with the sincere and *bona fide* object that was alleged,—of restraining them from parting with those goods or bills of lading? Have you any case or precedent upon this point?

Sir Edward Sugden said, his motion was upon principle, though there were cases in which, under similar circumstances, Lord Hardwicke committed parties for contempt. The case which came nearest to the present, was that of *Can v. Can*, mentioned in a note to Turner's Practice in Chancery^a.

Mr. Anderdon, on the same side, said, there was no doubt that Mr. Powis and Mr. Hughes had ordered and approved of the handbill. The affidavits did not bring a participation in the libel home to Mr. Kearsey. Those persons have used the process of this Court as a handle to cast imputations on the character of the defendant. What else was that than interfering with the process of the Court?

Mr. Knight, for Mr. Powis, admitted that the handbill was published by his direction, having been advised that it was the only effectual way of making the injunction effective. Nothing was done in this case but what was lawful and just, and what he would advise to be done, in like circumstances, until he should hear the contrary from the Court. Was it not right to put parties on their guard against dealing with the defendants contrary to the injunction of the Court? The simple fact in the case was, that the plaintiff in the suit, and his solicitor, gave publicity to the order of the Court, conceiving such publicity to be necessary; since the defendants might deal with the bills of lading as their own, if they once came into their possession, by the 6 G. 4. c. 94. The circumstances of the cases cited on the other side were different from the present, which he likened to those of *Baker v. Hart*, 2 Atk. 488, in which Lord Hardwicke refused to commit.

Mr. Beames, Mr. Goodeve, and Mr. Hughes, were also heard against the motion.—Besides distinguishing the circumstances of this case from those cited against them, they also entered upon the merits, in order to show that it was quite unsafe to allow the defendants to have any disposition or control over the goods or bills of lading, as one of them was insolvent, and the address of the other could not be discovered; contending also, that if the house in Singapore had known these circumstances they would not have consigned the goods to them.

The Lord Chancellor, in giving judgment, said, it was a settled principle that a Court of Law should never be slow in protecting the liberty of the subject; but it was a principle not less clearly established, that all Courts ought to be prompt to protect the pure administration of justice. So far were these two great public interests from being in contrast, that he considered them to be one and the same; and that the best protection of the liberty of the subject consisted in the pure and undisturbed administration of justice. To accomplish this object effectually, all Courts were armed with powers to punish whatever seemed to be a contempt of their authorities. Such contempts were, in many instances, crimes at common law, and the parties committing them, amenable to the ordinary tribunals. But even supposing that all these contempts could be punished at common law, still there might occur cases in which the redress afforded by them would be tardy, and therefore inefficient. A summary mode, therefore, was neces-

^a The following cases also were cited: viz.

Deacon v. Deacon, 2 Russ. 607; *Poole v. Sachevnell*, 3 P. Wms. 675; *Anonymous case*, 2 Atk. 469; *Ex parte Jones*, 13 Ves. 237.

sary to all Courts for removing, on the instant, all obstacles that might be opposed to the due administration of their functions. His Lordship, after instancing several supposed cases in which a Court might summarily interpose to remove such obstacles and punish the authors, said, that the question in the case before him was simply, whether the parties moved against had been guilty of an act which brought them within the rule of the Court, or whether they had perverted the proceedings, and made them the instrument of the sinister views of one party, to the injury of another. After giving the case his best attention, he was of opinion, that the acts charged against the defendants did not amount to such a contempt as would bring them within the rule laid down by the Court with regard to contempt of its authority. He could imagine a case in which a party might obtain an injunction avowedly for one object, but in reality for another,—the wounding the character and reputation, and the injuring the interests, of an adversary. In such a case, there was no doubt the party so assailed would have his remedy by action or indictment for the wrong he sustained; but yet, notwithstanding such remedy being in his power, the Court might see the propriety of visiting the offence with punishment, as a contempt of its authority. He could not say that the facts in this case would warrant him in coming to such a conclusion. Looking at the affidavits, he thought the parties had not been actuated by any other motives than those which they avowed, or that, in publishing the handbill, they conceived they were guilty of any contempt of the authority of the Court.—*Powis v. Hunter*, Sittings at Lincoln's Inn after Michaelmas Term, 1832. L. C.

Rolls Court.

INFANT TRUSTEE.

The widow of an intestate, having in the due course of administration collected his estate, vested the whole in certain stocks, in the joint names of herself and infant daughter. Upon her subsequent application to transfer her own share to her own name, the Bank objected, before the daughter's coming of age, without a declaration of this Court, that such a trust and transfer was within the Act 1 W. 4, c. 60: Held, that the infant was trustee for the mother upon the general principles of equity; and the transfer was made according to the 18th section of the act.

The plaintiff in this case was the widow of a Mr. Kidd, and their only daughter, an infant, was the principal defendant. Mr. Kidd dying intestate, the plaintiff took out letters of administration to his personal estate, and having paid his general expenses and debts, became entitled, together with her daughter, to a distributive share of the residue of the estate, which consisted of 5600*l.*, four per cent., 666*l.*

13*s.* 4*d.*, three per cent., and 300*l.* 13*s.* 10*d.* three and a half per cent. reduced annuities. These sums she, by mistake, transferred into the joint names of herself and her infant daughter; the consequence of which was, that she could not obtain her third share from the Bank until the daughter should attain her age of twenty-one; and having a pressing occasion for her money, she was under the necessity of filing a bill against her daughter, which prayed, that the Governor and Company of the Bank of England might be decreed to permit the plaintiff to transfer one third of this fund into her own name, and that the defendant might be ordered to concur with the plaintiff in such transfer.

Mr. Perry, for the plaintiff, after stating these circumstances, said the prayer of the bill had been granted, and the minutes of the decree had been shewn to the solicitor for the Bank; but he understood the Bank objected to the permitting of the transfer, unless the Court made an express declaration, that with respect to one third part of the fund, the infant was a trustee for her mother within the meaning of the 18th section of Sir Edward Sugden's Act, 1 W. 4, c. 60.

The *Master of the Rolls*.—Can there be any doubt, that the infant acquiring by the effect of a mistake a legal interest in the mother's distributive share; is a trustee for her mother to that amount?

Mr. Macdougall, for the infant defendant, did not object to the relief sought by the plaintiff. He was only desirous that the order should be made effectual. He believed that the ground of the objection made by the Bank to the transfer was, that as the Bank was not a party to the suit, the Court had no jurisdiction to make an order upon them. The Bank would not permit the transfer to be made without such a declaration of the Court as they considered necessary for their indemnity. He understood, the Bank positively refused to permit the transfer unless the Court expressly declared that it was a transfer within the meaning of Sir Edward Sugden's Act.

The *Master of the Rolls*.—I cannot declare that the infant is a trustee within the meaning of Sir Edward Sugden's Act; for the infant, under the circumstances, is a trustee for the plaintiff, upon the general principles which have always prevailed in the Court of Equity; and without reference to Sir Edward Sugden's Act, I can declare that the infant trustee is bound to transfer the sum in question to the widow, according to the provisions of that Act. That would be sensible; but the declaration said to be required by the Bank is absurd and insensible; and if the Bank have been thus advised they have been extremely ill-advised. Let the order be made according to the prayer of the bill; and let it be seen whether the Bank will venture to resist the decree of this Court. *Kidd v. Kidd*, M. T. 1832. M. R.

THE SITTINGS OF THE MASTER OF THE ROLLS,

IN AND AFTER HILARY TERM, 1838,

Will take place in the Mornings at Ten o'Clock.

At Westminster.

Friday,	Jan. 11	{ At One o'clock.—General Petitions, and Causes, Further Directions, & Petitions by consent.
Saturday	12	{ Causes, Further Directions, and Exceptions in the General Paper.
Monday,	14	
Tuesday,	15	
Wednesday,	16	
Thursday,	17	{ Causes, Further Directions, & Petitions by consent; and Causes, Further Directions, and Exceptions in the General Paper.
Friday,	18	
Saturday,	19	
Monday,	21	
Tuesday,	22	{ Causes, Further Directions, and Exceptions in the General Paper.
Wednesday,	23	
Thursday,	24	
Friday,	25	
Saturday,	26	{ Causes, Further Directions, and Exceptions in the General Paper.
Monday,	28	
Tuesday,	29	
Wednesday,	30	
Thursday,	31	{ No Sittings.—King Charles's Martyrdom.
		{ Causes, Further Directions, and Exceptions in the General Paper.

At the Rolls.

Friday,	February 1	{ At 10 o'clock.—To swear in solicitors, and Gen. Petitions.
Saturday,	2	{ No Sittings.—Purification.
Monday,	4	{ Short Causes.
Tuesday,	5	{ Causes, Further Directions, and Exceptions in the General Paper.
And on the subsequent days till the last seal.		

On the day after the last Seal at the Rolls, on Petitions.

On Friday in each week during the Seals,

Causes, Further Directions, and Petitions by Consent, will be heard at 10 o'clock.

The Sittings at Westminster will be in his Honor's new Court.

The entrance faces Saint Margaret's Church.

COMMON LAW SITTINGS.

KING'S BENCH.

Sittings appointed to be held in *Middlesex and London*,

Before the Right Honourable Sir Thomas Denman, Knt., Lord Chief Justice of the Court of King's Bench, in and after Hilary Term, 1833.

IN TERM.

<i>Middlesex.</i>		<i>London.</i>
Saturday,	Jan. 12	
Wednesday,	16	
Tuesday,	29	Wednesday, Jan. 3.

AFTER TERM.

<i>Middlesex.</i>		<i>London.</i>
Friday,	Feb. 1	Saturday, Feb. 2

The Court will sit at eleven o'clock on the 12th, 16th, and 29th; at twelve o'clock on the 30th, and at half-past nine on the other days.

Causes in the List on the 12th and 16th of January, not disposed of on those days, will be tried by adjournment on Monday the 14th, Tuesday the 15th, Thursday the 17th, and Friday the 18th.

None but undefended causes will be tried on Tuesday the 29th, and Wednesday the 30th.

THOMAS DENMAN,
Marshal and Associate.

EXCHEQUER.

Sittings at *Nisi Prius*, in *Middlesex and London*,

Before the Right Honourable John Singleton, Lord Lyndhurst, Chief Baron of the Exchequer, in and after Hilary Term, 1833.

In Term.

MIDDLESEX.

First Sittings.		Second Sittings.
Wednesday,	Jan. 23	Monday, Jan. 28 and Wednesday, 30 (by adjournment).

LONDON.

The Court will sit on Thursday the 17th January, and Friday the 18th January, to try the

London Common Jury Remanets from last Michaelmas Term.

First Sittings. Second Sittings.
Tuesday, Jan. 22 | Friday, Jan. 25

After Term.

MIDDLESEX. LONDON.
Friday, Feb. 1 | Saturday, Feb. 2

The Court sits at Ten o'clock.

No Special Juries will be taken in term.

The entry of causes at the Marshal's office closes at eight in the evening, two days (exclusive of Sunday) previous to the sitting-day.

HIGH COURT OF ADMIRALTY.

Sessions: January 12, 22, 29.

February 6.

By-day . . . 14.

Default-day, Mar. 29.

ECCLESIASTICAL COURTS.

ARCHES.

Sessions: January 11, 19, and 28.

February 5.

By-day, . . . 13.

PREROGATIVE.

Sessions: January 15, 23, and 31.

February 8.

By-day, . . . 16.

Convent Day, Mar. 19.

CONSISTORY.

Sessions: January 17, 25.

February 4, 11.

By-day, . . . 20.

Extra Court Day, Mar. 19.

DELEGATES.

Sessions: January 16, 24.

February 1, 9.

By-day, . . . 19.

NOTES OF THE WEEK.

INCORPORATED LAW SOCIETY.

A Special General Meeting of the Members of this Society took place on Tuesday

last, the 8th instant, in the Hall of the Society, when a resolution was made, (confirmatory of the proceedings of a previous meeting,) to increase the Capital of the Society by the creation and sale of new shares.

One of the objects of this measure—besides the power of admitting new members—is to proceed in the purchase of books for the Library, which has hitherto been supplied by the liberality of the members of the profession; but it is now deemed essential to accelerate the completion of the legal department of the Library.

We shall take an early opportunity to advert to the objects and advantages of the Society, all the details of which are before us; and in the mean time may remark, that in addition to the Hall and Library, and Offices of business which were opened for the use of the members in July last, the Club Room has been completed, and the subscribers were admitted on the 1st instant; and we understand the establishment is proceeding very satisfactorily.

LAWS OF AMERICA.—THE PRESIDENT'S SPEECH.

The recent speech of the President of the United States to the Congress, contains some remarks with which it may be useful to make our readers acquainted.

"The judiciary system of the United States," he observes, "remains imperfect. Of the nine western and south-western States, three only enjoy the benefit of the Circuit Court. The other six have only District Courts."

This appears to be a preference of Superior to Local Courts; and the President properly observes, "If the existing system be a good one, why should it not be extended? If it be a bad one, why is it suffered to exist?"

He also observes, on their Criminal system, that he had previously pointed out defects in the law for punishing *official frauds*, especially within the district of Columbia; and says, "It has been found almost impossible to bring notorious culprits to punishment; and according to a decision of the Court for that district, a prosecution was barred by a lapse of two years after the fraud had been committed. It may happen again, as it has already happened, that during the whole two years all the evidence of the fraud may be in the possession of the culprit himself. However proper the limitation may be in relation to private citizens,

it would seem that it ought not to commence in favor of public officers until they go out of office."

Some remarks are also made in the Speech on the subject of the Public Lands, and the near approach of the extinction of the National Debt of America. These, although not out of the sphere of our notice, are unnecessary to be dwelt upon at present.

ANSWERS TO QUERIES.

Law of Attorneys.

CERTIFICATE.—RE-ADMISSION. PP. 147, 161, & 195.

When I answered the query of H. S. S., according to p. 161, I was fully aware of the case referred to in p. 195 by D. T. H., of *Ex parte Nicholas*; but that decision of Chief Justice Gibbs, I believe, has been much questioned; at any rate, I know that H. S. S. will have no difficulty in now taking out his certificate, without being re-admitted. G. R.

NOTICE OF ADMISSION. P. 132.

If Q. give notice the day before the first day of next Hilary term, he can be admitted in the following Easter term; one full term's notice being sufficient. See Rule Trin. Term, 31 Geo. 3. **STUDIOSUS.**

Law of Property and Conveyancing.

HUSBAND AND WIFE. P. 195.

1. I beg to refer your correspondent to the case of *Prichard v. Ames*, 1 Turner, 222, in which it has been decided, that a legacy given to a married woman "for her own use and at her own disposal," vests in her as separate estate, and she may sue for it by her next friend; but it appears from the case of *Lamb v. Milnes*, 5 Ves. 517, that the intention to give the property to the *separate* use of the wife must be clearly manifested, in order to defeat the marital right of the husband.

T. A.

2. The moneypaid for rent and interest to B., in respect of her separate estate, is subject to her full control, independent of her husband, and she may dispose of it in any manner she pleases. The usual practice is to invest such "savings," as they are technically called, in the name of some friend, if there is no trustee of the fund; and the married woman possesses the same control over such investments as she has over the fund from the produce of which such investments were formed.

W. G. C.

DEVISE.—FRESHFIELD. PP. 147, 162.

Observing the answer of C. R. W. to the query of "A Constant Reader," I perceive that he states that the word "heirs" is requisite to a devise by will; I have only to remark, that if he will turn to 2 Black. Com. p. 108, he will there find a contradiction of his statement. Z.

DEVISE. P. 195.

On the testator's death, C. acquired a vested interest in a moiety of the monies arising from the sale of the devised estate. On her death, it would devolve on her administrator; and, unless he were expressly excluded by the will, which I should infer was not the case, her husband is entitled to administer to her effects, and consequently to her moiety of the monies in question. W. G. C.

Common Law.

CARRIERS' LIABILITY. P. 162.

If a carrier place a board in his office, and circulate handbills, stating generally that he will not be answerable for any parcel above the value of 10*l.*, if lost or damaged, unless entered as such, he is not accountable; but he must account for the loss of a parcel, if under the value of 10*l.* R. F. L.

QUERIES.

Common Law.

PAWNBROKER'S BANKRUPTCY.

When a pawnbroker is made a bankrupt, do his assignees take possession of the goods pledged with him prior to his bankruptcy, and apply them to the bankrupt's estate?

INQUISITOR.

ELIGIBILITY OF QUAKERS TO SIT IN PARLIAMENT.

Can a Quaker, by the 22 G. 2. c. 46; or by virtue of any other statute at present in existence, take his seat as a member of the House of Commons, without taking the oaths of allegiance, &c. required by various statutes to be taken by members of parliament? If he cannot, what course must be pursued, with regard to the late election for the southern division of the county of Durham, the electors there having returned a Quaker?

A DURHAM ELECTOR.

LIABILITY FOR BREAKING A WINDOW.

A., walking through the city, by accident breaks a pane of glass, of the value of 10*s.*, in

B.'s shop-window. Is *A.* liable to pay *B.* the value of such pane, or any, and what sum? It is said to be 3s. 6d. by act of parliament: is this true, or is it a vulgar error? A reference to the statute, or to any decision, would be desirable.

O.

JOINT NOTE.

A. and *B.* agree to give *C.* a promissory note, which is drawn in the proper form, as *joint and several*. *A.* accordingly signs the note; but *B.* afterwards refuses. Is not *A.* bound to pay the whole amount, when the note becomes due?

W. W. C.

APPARENT PARTNERSHIP.—BANKRUPTCY.

A. having begun business, is furnished by *B.* with certain articles, for the sale of which it is agreed that *A.* shall receive a per centage on the amount sold. *A.* does not purchase the goods, but merely acts as a commission agent; and the goods, though sold along with, are kept distinct from *A.*'s own goods. In case of a distress or execution being put into *A.*'s house, or in case of *A.* becoming bankrupt, would the goods of *B.* be liable to be sold under the distress, levy, or bankruptcy, along with *A.*'s own private stock? Or could *B.* make any claim for, and recover his goods at any time?

C.

Ratio of Property and Conveyancing.

RECEIPT FOR CONSIDERATION MONEY.

Can a purchaser call upon the vendor for a receipt to be indorsed upon an original lease, for the consideration money acknowledged to be received in the body of the deed? The lease having been granted so long ago as twenty-seven years, it is fairly to be presumed, after such a lapse of time, the consideration money was actually paid.

W. W. C.

LIMITATIONS.—RECOVERY.

If a limitation is made to *A.* for life, with a remainder to the heirs of the bodies of *A.* and *B.*; can *A.* by suffering a recovery, or by any other mode of conveyance, bar the remainder over to himself and *B.*? or what estates do *A.* and *B.* take? Or if a limitation is made to *A.* for life, remainder to *B.* for life, with remainders to the heirs of the bodies of *A.* and *B.*; can *A.* and *B.* bar the remainders over, so that the estates of *A.* and *B.* may come into possession at one and the same time?

I. B. D.

DEVISE.—JOINT TENANTS.

A. B., after giving an estate to his wife for life, gave and bequeathed the same to his three children, James, John, and Jane, their heirs

and assigns for ever, as *coparceners*; and directed that the rents and profits should be equally shared between them; and in case they should sell the same, that the monies arising from such sale should in like manner be shared between them. Will the children take as *tenants in common*, or as *joint-tenants*?

A STUDENT.

VOLUNTARY CONVEYANCE.

A., in consideration of natural love and affection, conveyed certain estates to his son *B.*, and afterwards, for a valuable consideration, released the same premises to *C.*, who had notice of the first assurance to *B.* Is the conveyance to *B.* void, as against *C.*?

E. W.

Practice.

NOTICE OF JUSTIFICATION.

By the old practice, notice of justification of bail must be served before *eleven o'clock* in the forenoon of the day on which it is required to be given. R. T. 59 Geo. 3. By sec. 16. of Rule 1. of the Rules of Hilary term, 1832, it is ordered, "That it shall be sufficient in all cases, if notice of justification of bail be given two days before the time of justification." And by the 8th rule it is ordered, "that in all cases, not expressed to be clear days, the days shall be reckoned exclusively of the first, and inclusively of the last day." Under these rules, is it *now* necessary, in giving notice of justification, that such notice should be served before eleven o'clock in the forenoon? or will any time of the day, before nine o'clock in the evening of the day it should be served, suffice?

A CONTRIBUTOR.

ARREST.

Can a person be arrested on Christmas-day, or any day appointed for a general fast?

R. F. L.

SCIRE FACIAS AGAINST BAIL.

The statute 2 W. 4. c. 39, § 21, enacts, "That from the time when this act shall commence and take effect, the writs hereinbefore mentioned shall be the only writs for the commencement of personal actions in any of the Courts aforesaid, in the cases to which such writs are applicable." It is clear, a *scire facias* against bail is the commencement of a personal action, and a release of all actions is a bar to it. Co. Litt. 290 b, 291 a. So, as a *scire facias* is a new action, it may be sued out by a new attorney, without leave for changing the attorney, or giving notice that the old attorney is changed. 1 Tidd. 84, 6th ed. Perhaps some of your correspondents can inform me if *sci. fa.*'s against bail are abolished by the statute above cited?

P.

MISCELLANEA.

SPINSTERS.

Among our industrious and frugal forefathers, it was a maxim, that a young woman should never be married until she had spun herself a set of body, bed, and table linen. From this custom all unmarried women were termed spinsters,—an appellation they still retain in all law proceedings.—*Conveyancer's Guide*.

BOROUGH ENGLISH.

The custom of Borough English, that the youngest son, and not the eldest, shall succeed to the burgage tenement on the death of the father, is said to be founded on the supposition that the youngest was more certainly his offspring. The lord of the fee, by the custom of *Marcheta*, had a right to break the seventh commandment. In many manors, however, the right was constituted for a fine, particularly in the northern counties.—*16*.

THE EDITOR'S LETTER BOX.

A correspondent, who signs the name of "Fitzherbert," of the Temple, is angry that we omitted, in the enumeration of Lawyers in Parliament, the name of (we presume) his friend, John S. Poulter, Esq., of No. 5, King's Bench Walk, the member for Shaftesbury. We had no intention to omit this or any other name, but did not observe it in the authentic lists at the time of the publication of our last number. "Mr. Poulter, we are informed, will support the Ministers; at least he was an advocate for the Reform Bill, and his ideas are liberal, though not revolutionary." Mr. Fitzherbert observes, "this is one error that he *knows*: there are others that he *suspects*." As he is interested for his *own* sake in correcting one mistake, perhaps for the sake of *others* he will, so soon as he has discovered them, point out the rest. There are in all fifty-nine names.

A correspondent in North Wales observes, that "A Conservative," who wrote upon *accuracy*, was guilty of a grievous outrage, by stating Ludlow to be in Herefordshire instead of Shropshire; and he protests against this "order of removal," both for the sake of the beauty of the town and the salubrity of the air, independently of its classic castle, immortalised by Milton's Masque of Comus.

We concur with *Fiat Justitia*, that the case referred to should be communicated to the proper quarter, and that even should the facts, when ascertained, not justify the adoption of any proceedings, the exposure of such mat-

ters, and the knowledge that they will not pass unnoticed, whenever occasion may render it necessary, will naturally tend to check the practice so justly complained of. We have inserted another letter on the subject of sham practitioners.

Some further remarks on the costume of Solicitors in Court, have been made by one of our Correspondents; and offensive matters similar to those to which he alludes, ought not to pass unheeded. But whatever may be thought of the *right* to resume the attorney's gown, we question whether the members of that numerous branch of the profession would relish a regulation to *compel* them to adopt it. The regulation, if made, would probably be general, and attorneys engaged in actual business before the Court would be required, like the members of the bar, to appear in their proper costume. The grievance, as to the occupation of the seats in Court to which they are entitled, and the deficient accommodation in other respects, are matters of a more pressing nature, and ought to be attended to.

"A Constant Reader" will observe that his enquiry has excited ample discussion; and we have no doubt he will appreciate properly our reason for not inserting his censures of another correspondent.

The communication of H. B. A. shall be inserted in the Supplement.

We thank our correspondent G. W. for the liberal power he has allowed us, and we assure him it has been on much consideration that we have exercised it in the manner he will perceive.

A letter which we have just received, on the arrear of causes at *Nisi Prius*, will probably appear next week. This is a most important subject, and requires the best consideration of practical men. The delay of Common Law trials is an evil equal in magnitude to the proverbial delays in Chancery.

The Queries and Answers of "A Constant Reader," and "H.," will probably appear next week.

We cordially thank A. F. for his suggestions regarding the new series of the Supplement, which we are glad to find meets very general approval. Our subscribers will bear in mind, that it is, in its present shape, a *continuation*, in an abridged form, of the Monthly Record.

We trust that we have now, at the end of more than two years' experience, so matured our plan, that no considerable alteration will be hereafter required. It is a pleasing duty—with the commencement of the new year—to express our grateful acknowledgments for the general support of our professional brethren, and to assure them that we shall more and more strive to deserve their approbation.

The Legal Observer.

Vol. V. SATURDAY, JANUARY 19, 1833. No. CXX.

—“Quod magis ad nos
Pertinet, et nescire malui est, agimus.”

HORAT.

CHANGES IN THE LAW DURING THE LAST SESSION OF PARLIA- MENT, 1831—1832.

No. XV.

Tenants see some other minor alterations made in the Law in the last session of Parliament, with which our readers should be made acquainted.

Poor.—By the 2 W. 4. c. 41, reciting, that there are in many cases allotments made for the benefit of the poor, it is enacted, that the trustees thereof and the parish officers in vestry assembled, may let portions of such poor allotments to such industrious cottagers as shall apply for the same, they undertaking to cultivate them properly, and paying a reasonable rent; and the vestry is to be held annually, for the purpose of receiving applications. If the rent be in arrear, or the land not duly cultivated, the tenant may be evicted; and power is given to recover possession of land illegally held over, by summary process; and if the rent be in arrear, it may be recovered by summoning the party before two justices. The allotments may be exchanged; but no habitation is to be created on the land demised.

Norfolk Assizes.—It is provided by the 2 W. 4. c. 47^a, that the Assizes for the county of Norfolk, and for the city of Norwich and county of the same city, should be

held twice in every year at Norwich. Before this Act, the Summer Assizes only were held in that city, the Spring Assizes being held at Thetford, which is an inconsiderable place, and unprovided with any proper gaol.

Vice Admiralty Courts.—By the 2 W. 4. c. 51, the King is empowered to make regulations respecting the practice and fees of the Vice Admiralty Courts abroad; and if any person shall feel himself aggrieved by the charges made by any of the officers or practitioners therein, he may appeal to the High Court of Admiralty. It is also enacted, that in all cases where a ship or vessel shall come within the local limits of any Vice Admiralty Court, it shall be lawful for any person to commence proceedings in any of the suits hereinbefore mentioned in such Vice Admiralty Court, notwithstanding the cause of action may have arisen out of the local limits of such Court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits. This latter part of the Act was rendered necessary by some recent doubts as to the jurisdiction of Vice Admiralty Courts in the event provided for.

Roman Catholics.—It has lately been doubted, notwithstanding the recent Acts for removing disabilities from the Roman Catholics, whether they can acquire and hold in real estate, the property necessary for religious worship, education, and charitable purposes; it is therefore provided by the 2 & 3 W. 4. c. 114, that Roman Catho-

lics, in all parts of Great Britain, are to be subject to the same laws as Protestant Dissenters in that respect; but the Roman Catholic school-masters may be required to take the oath prescribed by the 10 G. 4. c. 7 (the Catholic Relief Act).

Friendly Societies.—It was enacted by the 10 G. 4. c. 56, that if the Friendly Societies then enrolled should not conform to the provisions of that Act within the space of three years from the passing of such Act, such societies should cease to be entitled to the privileges of any of the Acts thereby repealed; but that the provisions of these Acts should continue in force, as to all societies established under them before the passing of the 10 G. 4. c. 56, for the space of three years, or until they should conform to the provisions of that Act. These three years expired on the 19th of June, 1832; but many Friendly Societies not having conformed to the provisions of the 10 G. 4. c. 56, the term is extended by the 2 W. 4. c. 37, until Michaelmas, 1834, by which time all pre-existing societies must conform.

Subletting: Ireland.—The rule of law commonly called the rule in *Dumport's case*, from having been first laid down in that case^b, is probably known to most of our readers. It was there held, that when there is a condition in a lease against underletting, if the landlord once gives a license to underlet, the condition is discharged, and the lessee, and those claiming under him, may make underleases *ad infinitum*. This rule is proposed to be entirely abolished by the Real Property Commissioners^c; and by the 2 W. 4. c. 17, it is enacted, that where lands are held under lease containing a covenant against subletting, no future act of the landlord shall be deemed a waiver of such covenant, unless he be a party to the instrument of subletting, or his consent be given in writing.

THE PROPERTY LAWYER.

No. X.

TENANCY AT WILL.

WHERE an estate at will is determined by the lessor, the tenant is entitled to the corn sown,

and other emblements; but it is otherwise when the estate is determined by the lessee. Litt. § 68; *Oland's case*, 5 Co. 116; 1 Cru. Dig. 259. Although the most obvious mode of determining the estate of a tenant at will is by an express declaration that the lessor shall hold no longer; Co. Litt. 55 b; yet any act of ownership exercised by the landlord, which is inconsistent with the nature of the estate, will also operate as a determination of it; Co. Litt. 55 b; although neither party can determine an estate at will at a time which would be prejudicial to the other. *Leighton v. Thud*, 1 Ld. Raym. 707. In the following case, a threat to recover possession by the owner of the fee, was held to determine the estate, under the following circumstances:—

About seventy years ago, Thomas Price, the defendant, went to France, and conveyed the property in question to his brother Robert, the lessor of the plaintiff, in fee.* About two years after Thomas Price returned, was let into possession by his brother, and remained in occupation ever since; but it did not appear that he had paid rent. The following letter, written by Robert Price's attorney to Thomas Price's attorney, was given in evidence, to shew a demand of possession previous to the action:—"Mr. Thomas Price cannot have given you a correct statement of the transaction between him and his brother. Mr. Robert Price has a conveyance of the property mentioned in your letter, as well as the original title-deeds; but he will be very happy to convey back the property and deliver up the title-deeds, if his brother will pay him what he owes him: unless, however, he does that, Mr. Robert Price will not only not deliver up the title-deeds, but as his brother has threatened hostilities, he will, without delay, take measures for recovering possession of the property. The money due to Mr. Robert Price you will find to amount to a great deal more than the value of the property conveyed to him. April 2, 1832."

A verdict having been found for the plaintiff, with leave for the defendant to move to enter a nonsuit instead, if the Court should be of opinion that there had been no sufficient demand of possession, *Jones*, Serjt., obtained a rule *nisi* accordingly, which, when the time arrived for making it absolute, the Court called on him to support. He contended that the defendant was a tenant at will, and that the letter in question contained no express determination of the lessor's will; the letter was only conditional, and no time was fixed within which the defendant was to accede to the conditions proposed. But the defendant could not be treated as a trespasser until there had been an absolute determination of the

^b 4 Co. 119, b.; S. C. Cro. Eliz. 315.

* See 3d Report, R. P. Commissioners, printed 2 M. R. 334.

lessor's will. *Goodtitle v. Herbert*, 4 T. R. 680; *Right d. Lewis v. Beard*, 13 East, 210. In *Dean v. Rawlins*, 10 East, 362, a case of permissive occupation, in which there had been no regular determination of the landlord's will, *Le Blanc, J.* asked, "From what time before the ejectment brought, it could be said that the defendant became a trespasser?" and it would be difficult to answer that question in the present case.

Tindal, C. J.—Upon the facts reported in this action, it appears that Thomas Price, the defendant, had conveyed the land in question to his brother Robert Price, the lessor of the plaintiff, seventeen years ago. There was some dispute whether Robert Price had or had not paid a consideration for the property; the one asserting, and the other denying, that a debt was due from Thomas to Robert Price to the amount of the value of the land. Thomas Price, after an absence of some length, was let into possession by his brother about fifteen years ago, upon what terms does not appear; but he continued in possession till the present time, and cropped the land. It cannot be contended, therefore, that he had a less interest than a tenancy at will; because, after an occupation of such length, it would be hard, if, on the determination of the tenancy, he were not entitled to the emblements, which a tenant at will may always claim. The question, therefore, is, whether the letter of Robert Price's agent was sufficient to determine the holding at will; and I am of opinion that it was, because any thing which amounts to a demand of possession, although not expressed in precise and formal language, is sufficient to indicate the determination of the landlord's will. Now it is impossible to read this letter without seeing that it is an answer to some former letter, and that the correspondence was passing between two attorneys, clothed with the character of agents. It equally appears, that Thomas Price had made a claim inconsistent with any interest, other than that of landlord. That alone would be a disclaimer. But, besides that, there is a sufficient manifestation that the tenancy, if any, was to determine. "Unless Mr. Thomas Price pays what he owes, Mr. Robert Price will not only not deliver up the title-deeds, but will, without delay, take measures for recovering possession of the property." The intimation that the lessor of the plaintiff would, without delay, take measures unless a certain demand were complied with, throws it on the other party to act. Upon the ground, therefore, that the defendant has made a disclaimer, and that the offer not accepted was a sufficient indication of an intention to eject, I am of opinion that the defendant's tenancy at will was determined, and that this rule must be discharged.

Doe d. Price v. Price, 9 Bing. 356; 2 B. & C. 767.

ARREAR OF CAUSES AT NISI PRIUS.

TO THE LORD HIGH CHANCELLOR.

My Lord,

Looking to your Lordship as the Head of the Law, in your character of Chancellor, and as having been the source and origin of great legal reform,—which throughout your public life you have so strenuously advocated,—I am disposed to address your Lordship, not with complaints that you have not accomplished more,—but with the humble hope of further benefits, and the view of assisting to bring to your Lordship's aid that, without which the task would be too gigantic for even your Lordship's vast and acknowledged powers,—I mean *Public Opinion*.

My object being, not the vain pretension of advancing any thing new to one of your Lordship's sagacity, so much as to entitle myself to some consideration with the suitor, whom I seek to profit, it is but reasonable that I should shew some ground for supposing that I am not entirely ignorant of the subject I am writing upon. With this view, therefore, I hesitate not to avow that I am an attorney; but as I never have sought publicity, I desire to avoid it now, however impelled to bring about a public benefit, if it be in my power. Experience, too, I might claim, to entitle to consideration what I am about to offer thus publicly, if a practice of forty years, and an education under one of the best common lawyers of his day, in the heart of the first commercial city in the world, can entitle me to attention. Now, my Lord, I mean to make use of the weight I may thus possess, in declaring what I believe to be the honest and avowed sentiments of the profession at large, and I know it to be so amongst those with whom I more particularly associate; and we have hailed with satisfaction the measures that have been adopted to give the suitor facilities, and especially in simplifying legal proceedings. The barrister has little means of judging how acutely the client has writhed under the disappointment occasioned by seeing his expectations of bringing the merits of his case to issue, frustrated by the long arrear of previous causes. It is the attorney, who is followed to his office by the dejected, disappointed, and, perhaps, half ruined client, to whom he can offer no relief—no consolation—who alone can fully judge of his feelings. A barrister, too, can

seldom have the feelings of a friend towards a party he pleads for; but with us, my Lord, warm and lengthened friendships are not unfrequently mixed up with professional confidence; and bitter indeed are, and must be, such interviews as these, to our branch of the profession. We, too, have not to deal with the mere complaints that arise from disappointment at protracted delay, but too often to witness its consequences in the downfall of a firm, or the ruin of a family. The profession are too apt to be charged with want of feeling;—those who are best able to judge, will bear testimony to the injustice of such a charge; for no one acquainted with human nature, will deny that, as the client's case opens, and his confidence expands, so the attorney identifies himself with his success; and few clients but know how just are these observations.

To suppose for a moment that the practitioner profits by, or would willingly tolerate delay, would be preposterous. It is in direct opposition to his interest. No cause is ever so well, or so efficiently got up, as at the first. When, therefore, the delays of trial, term after term, lead to renewed trouble and anxiety, there is not, neither can there be, any adequate compensation. It may be allowed, that great good will result from the simplification of pleadings; but the grand evil yet to be remedied, is the *great arrear of business from the delay of trials*; for, in the King's Bench, there remained on the last day of the Sittings in London and Westminster, upwards of seven hundred cases untried; in the Common Pleas, about one hundred; and in the Exchequer, about seventy.

Now to contemplate this frightful arrear, is alike distressing to the Judge and to the Public; the Judge, with the highest legal powers, cannot remedy the evil. A cause must be disposed of with becoming solemnity and attention, or the Courts of Justice would soon get into disrepute. Allow but the fair proportion of time to each, and it will require no nice calculation to see that the evil has increased, is increasing, and must be diminished. But where is the remedy? Why, my Lord, it is as simple as it will be efficacious. Let the sittings at *Nisi Prius* in London and Middlesex proceed together, and one half of the evil is remedied at once. Of the five Judges in each Court, the one next in seniority to the Chief might specially so sit; and as there might be an objection to any plan by which the Court would, during term, be deprived

of its proper number on the bench, the *Nisi Prius* sittings might remain during the term, as at present. Here, my Lord, is a remedy, not entailing upon the nation any charge, unless it should be found to be an act of justice to remunerate officers, whose fees might at first sight seem to be in part put into others' hands. This, however, would be insignificant, compared with advantages to be obtained; but I expect to shew, that little, if any, actual loss will follow.

Shall I be told, my Lord, that the great obstacle to any such plan as I propose, will be raised by the leaders of the Bar? Of the Bar I have the highest opinion. I am known to many, and have seen with satisfaction their attainment of honors, justly acquired by their independence and abilities. I acknowledge the reasonableness of great abilities and application being met by adequate remuneration; and with these feelings, I am sure I cannot justly be charged with any desire to prejudice the Bar.

The proposed alteration will, I admit, lead to a division of the Bar in each Court; but this, I contend, will be an advantage to the public, by calling into action the abilities of many an advocate, who only waits the opportunity to shine, which the present limited range denies to so large a portion of industry and talent.

If we take the arrear of the Court of King's Bench at seven hundred, such an arrear will naturally present itself as productive of a large amount of remuneration; but that is in a great measure ideal; for in those causes alone which approach the chance of trial, are briefs delivered. If, therefore, the dispatch of business left only so many causes as would insure a constant supply of business, their advantages would be the same as now; for they can but have their time fully employed. A field, also, would be open to the junior counsel; and the public would reap the great benefit of this reform, in the facilities of trial;—the Judge be relieved from the opprobrium of delays, which really ought not to attach to him,—and the country become satisfied, on a point which is now one of general and universal complaint; as all the other benefits are illusory, whilst such an arrear of causes remains without remedy.

I might add, without the fear of contradiction, that so far from these facilities diminishing the practice of the Court, they would increase it; for this very facility is the only means of affording cheap redress, of which so much has of late been said and

written; and so surely as the suitor will have the means of an expeditious disposal of a cause, so surely will he seek the determination of a jury, in preference to arbitration, or to foregoing a fair claim. Again, let me observe, offer but the advantages I have suggested, and you open the Courts of the Metropolis to a vast number of causes (not of themselves of local venue) from the country, to the relief of the business on circuit.

With every apology for the length I have been drawn into, for the purpose of sufficient explanation,

I am, my Lord,
Your Lordship's very obedient,
humble servant,
NISI PRIUS.

REVIEW.

Notes of Proceedings in Courts of Revision, held in October and November, 1832, before James Manning, Esquire, Revising Barrister. And the Reform Act, with explanatory Remarks. By William M. Manning, of Lincoln's Inn, Esq., Barrister at Law. London: Sweet; Stevens and Sons; and Maxwell.

We anticipated (Vol. IV. p. 413) that some authorized publication would appear on the subject of the proceedings of the Revising Barristers in carrying the Reform Act into execution. Mr. Manning's is the only work with which we are at present acquainted. The editor appears to have had the opportunity, with the assistance of Mr. R. W. Bacon, of taking very accurate notes, and obtaining authentic reports of the precise grounds of the Barristers' decisions: so that we are presented with a fair specimen of this first "working" of the great change which has been effected in the representative system, so far as the machinery of revising the lists extends.

It may not be uninteresting, amongst other matters, to describe, from the pages of Mr. Manning, the mode of proceeding in these Courts, and to set forth the authorities and forms connected therewith.

At the opening of the Court the clerk of the Revising Barrister read as follows:—

"The Court now holden for the revision of the lists of voters for the borough of Newport, in the Isle of Wight, is so holden under the following nomination and appointment.

"I, the Honorable Sir William Blackmore Taunton, Knight, being the senior Judge in

Commission of Assize, in the county of Hants, and now travelling the summer circuit, do hereby nominate and appoint for the Isle of Wight, in the said county, James Manning, Esq., Barrister at Law, to revise the lists of voters in the election of a knight of the shire. And I do also nominate and appoint the said James Manning to revise the lists of voters for the place undermentioned, that is to say, Newport.

"Given under my hand, this seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-two.

"W. E. TAUNTON."

"And in pursuance of the following notice:—

"Borough of Newport.

"I, James Manning, of Lincoln's Inn, Esq., Barrister at Law, having been nominated and appointed to revise the lists of voters for the borough of Newport, hereby give notice that I shall hold a Court for that purpose at the Guildhall of the said borough, on Monday, the fifteenth day of October instant, at ten o'clock in the forenoon.

"JAMES MANNING.

"London, 9th October, 1832."

"The business of the Court will proceed in the following order:—

"The town clerk will be called upon to produce the lists of freemen, and of persons claiming as freemen, and of persons objected to as freemen; and the overseers of the poor of the several parishes situate wholly, or in part within the borough, will be called upon to produce their several lists of electors, of objected voters, and of claimants.

"In revising the lists, those parishes in which no list of objections has been published will be taken first; the apparent errors therein (if any) will be corrected according to the alphabetical order of the names. A proclamation will then be made by the clerk of the Revising Barrister for persons who have given notice of claims omitted by the overseers in their lists, or who have given notice of objection in the following form:—

"Any person who has sent in a claim to vote in respect of property in this borough, within the parish of ———, or who has sent in a notice of objection to the claim of any voter for this borough, inserted in the list of voters for the said parish, must now appear in this Court before the said list be signed by the Revising Barrister."

"If any person shall appear in pursuance of such proclamation, the claim, or the objection sent in by such person will be then examined. After such examination, or if no person shall appear upon such proclamation, the Revising Barrister will read over the list again and sign it, and will then proceed to the revision of the other lists in alphabetical order, until the whole revision of the lists of voters for this borough shall be completed.

"The course with respect to lists in which names are objected to will be as follows:—

"1st. Errors will be corrected.

"2d. Objections will be examined.

"3d. Claims of persons whose names are

not inserted in the lists of persons entitled to vote will be examined.

"4th. Proclamation will be made as before.

"In the case of the non-appearance of a party when the vote which he claims or disputes is called on, the next name in the list will be taken until the votes are all decided where the parties *do* appear. The votes deferred will then be called over again in alphabetical order, and those where the parties are present, determined. When all these are decided, the Revising Barrister will adjudicate upon the remaining cases *ex parte*."

It will be important to a large class of our readers to be made acquainted with the decision of the Revising Barristers on the right of Attorneys to practise in the Courts of Revision.

"Mr. Edward Bryant, an attorney of Southampton, produced a written authority from the respondent to appear for him. It was contended on behalf of the objector, that Mr. Bryant was disqualified from attending by the 52d section; and it was said, that any person advocating the cause of another is a counsel, and that the object of the legislature was to prevent the parties from incurring the expense of employing paid agents.

"*Revising Barrister*.—I am of opinion that Mr. Bryant ought to be heard. By the section which has been referred to, the Revising Barrister is directed to proceed in the same manner, except where otherwise directed by that act, as the returning officer of any county, city, or borough, according to the laws and usages then observed at elections. The constant practice before returning officers and their assessors, previously to the passing of the Reform Act, was to allow votes to be impugned and to be supported by the agency of attorneys. Is the right or custom of parties to avail themselves of the assistance of professional agents taken away by the late statute? The act does not direct in what manner the voter or claimant shall present himself before the Court when supporting his title as an elector; nor does it contain any clause directing the mode in which objectors shall appear, otherwise than by requiring the appearance of the objector, by himself, or by some other person, in support of the objection, as a condition precedent to the investigation of the voter's qualification. Few of the members of one branch of the legislature would be unacquainted with the services performed by attorneys at elections; and it must have been apparent that the assistance of an attorney would be more likely to be required before Revising Barristers than before returning officers, who might, and still may be attended by counsel. The legislature not having taken the obvious course for effecting its supposed object, by expressly forbidding the attendance of attorneys, it seems too much to engraft such a prohibition upon words, which in common parlance extend only to serjeants and barristers at law, doctors of law, and advocates at the Scottish bar."

The compiler observes, that the novelty and importance of the proceedings under the Act, have induced him to enter into details which, under other circumstances, might appear to be unnecessarily minute. We agree with him in this respect; but as we write for the profession in general, we should not be justified in following the author into matters which concern a small portion only of our readers. Such of them as are directly interested in the subject, will do well to procure Mr. Manning's book, which, in small compass, comprises much valuable information.

PLEASANTRIES OF THE LAW REPORTS.

No. IV.

I TRUST I have already convinced my younger readers, that in reading law, all is not "barren from Dan to Beersheeba;" if not, let them take the following extracts, and the assurance that there are better to be found.

In Lord Coke's third Institute he thus treats of duels. It is against the law of nature and of nations (as well as against the law of God) for a man to be judge in his own proper cause, especially in *duello*, where fury, wrath, malice, and revenge, are the rulers of the judgment; and there is no thing honorable (whatever some pretend) that is against the laws of one's country and the laws of nature and nations. He that slayeth is in a worse case than he that is slain; for the murderer loseth not only his lands and goods, but his life also, and his honour, which he so much respected; for by his attainder his blood shall be corrupted; and if he were noble or genteel before, he thereby becomes ignoble and base: and he that is slain, by law loseth none of them; so as hereof it is truly said, *infelix pugna ubi majus periculum incumbit victori quam victo*. If any subject, by word, writing, or message, challenges another to fight with him, this is an offence before any combat be performed, and punishable by law. Much more, if they fight, (if no death ensue nor blood drawn) which being an affray and a great breach of the peace, is to be punished by fine and imprisonment, and to find sureties for good behaviour. There is a *duellum* allowed by law, defending a suit for the trial of truth, which kind of battel, in case of appeals, and which of

right is by public authority, and, as some hold, has its warrant by the word of God, by the single battel between David and Goliath, which was stricken by public authority. 3 Inst. 157. [This is now abolished].

King Edward III. in the 16th year of his reign, having war with the French King, for his right to the kingdom of France, out of the greatness of his mind, for the love of his subjects, the saving of their blood, and in speedy trial of the right, offered the single combat with the French King; but he refused it. So, after long and chargeable wars between the Crowns of England and France for the right of the kingdom of France, it was an honorable offer, which King Richard II. made to Charles, the French King; first,—either a single combat between the two Kings; second, or a combat between the two Kings and three of their uncles on either side;—third, or that a fit day and place might be assigned when, under the universal conflict of both their armies, an end might be put to the war. The Duke of Lancaster, according to his commission, made these offers from the King of England to King Charles of France; but he was *auditus sed non exauditus*; for King Charles liked none of these offers. And in *anno domini* 1196, Philip, King of France, sent this challenge to our Richard the First:—that King Richard should choose him five for his part, and he, the King of France, should appoint five for his part, which might fight in the lists for all matters in controversie between them, for the avoiding of shedding of more guiltless blood. King Richard accepted the offer, with condition that either King might be of the number; but this condition would not be granted. 3 Inst. 159.

If a legacy be given to a child unborn in the womb, and the birth prove monstrous, *i. e.* very contrary to the common form and shape of mankind, as with a crow's-beak instead of a nose, or with the face of an ass instead of a better, in such an ill favoured case, the legacy is void. Otherwise, if it is born only with some of the less principal members imperfect or supernumerary, as with half a thumb, or two thumbs, or six fingers on a hand, or the like; but if the birth, (not accidentally) be imperfect as to its integrals, or defective as to its more noble and principal parts and members, as but with one eye, or one hand, although the creature hath life, the legacy hath none; for albeit an amplification of

the natural form shall not prejudice, yet a mutilation thereof will.—*Note*, this extends not to hemaphrodites, who are not excluded a single capacity; for that sex which most prevails with them in nature shall likewise prevail in law, as to the legacy bequeathed. Orphan's Legacy, 475.

One Becher, a gentleman of the Middle Temple, was returned in an attain; and before the return of the pannel he became a minister of the Church; and at the day of the return he appeared and prayed to be discharged, according to the privilege of those of the ministry. But the Court allowed not of his prayer, because he was a layman at the time of his pannel made; and so he was sworn. *Becher's case*, 4 Leon. 190.

One Howel Gwin was convicted of forging a deed, by putting a dead man's hand to it, and condemned to 100*l.* fine, and to stand in the pillory two hours before the Hall door.—Memorandum, he cut off a dead man's hand, and put a paper and a seal into it, and so signed, sealed, and delivered the deed with the dead hand, and swore that he saw the deed sealed and delivered. *Styles' Rep.* 362. [This case has lately been dramatised at one of the minor theatres.]

The clause of *non obstant* was first used by the King, in his grants and other writings, in the time of Hen. III. about the year 1252. Matthew Paris calls it an odious and detestable clause, and Roger de Thursby, then Justiciar, fetching a deep sigh at the sight hereof in the King's grant, cried of both the time and it, saying, "It was a stream derived from the sulphureous fountain of the clergy. Speed. 530.

A man and his wife had lived a long time together; and the man having at length spent his substance, and living in great necessity, said to his wife that he was now weary of his life, and that he would kill himself: the wife said that she would die with him; whereupon he prayed her that she would go and buy some ratsbane, and they would drink it together; which she accordingly did, and she put it into drink, and they both drank of it: the husband died; but the woman took salad oil, which made her vomit, and she recovered. *Quere, if murder in the wife.* Moor. 754.

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DISSERTATIONS ON
CONVEYANCING.

No. IX.

ON THE CONSTRUCTION OF THE STATUTES
OF LIMITATION AND NONCLAIM ON FINES.

In 1 Ca. & Op. 423, it appears that *A.* entered upon and levied a fine of land, to which *B.*, an infant, had a right at the time of the fine levied; that he died a minor, leaving *C.* his heir, *who was under no disability*, and more than five years had elapsed since the death of *B.*; that the query was, "whether *C.* might bring ejectment at any time, or whether he was barred by suffering five years to pass since the death of *B.*"; and that it was the opinion of Mr. Booth, that the heir of one so dying under a disability, was not limited to the five years, and that he might claim at any time. It is admitted, however, that this opinion has been overruled by *Dillon v. Leman*, 2 H. B. 584; but as that case is cited by Mr. Preston, as an authority for the statement in his edition of the Touchstone, p. 32, "that the fine will begin to run against the heir from the time at which his title as heir commences, and *will begin and continue to run notwithstanding the heir be within age, or under any other disability at the death of the ancestor, since he was not the person to whom the right first accrued*;" it is proposed to enquire how far that statement is sustainable.

The case 1 Ca. & Op. 415 (having previously been submitted to Mr. Filmer, Mr. Booth, Mr. Serjeant Hewitt, and other eminent counsel) was laid before Mr. Kenyon in 1771, upon which he wrote as follows:—"Joseph died in 1727. At that time John's right of entry accrued; but he was out of the realm, and so continued till his death in 1734. Upon John's death, the right of entry devolved upon Atkins, *who was then of age, and under none of the disabilities to which the saving clause in the statute extends*. He, therefore, ought to have claimed within twenty years from the time of the death of Joseph, or within ten years after the disability was removed by the death of John;" from whence it was inferred, that it was Mr. Kenyon's opinion, that if Atkins had been under any disability on the death of John, he would have had ten years to make his entry after the same was removed. On this opinion (which coincided with that of Mr. Booth, and towards which Mr. Filmer and Mr. Serjeant Hewitt inclined) being brought under the consideration of Mr. Fearn, in 1786, relative to the point which was disputed between him and Mr. Serjeant Hill, "whether a party under the disability of nonage at the time of the accrual of his right was barred, if he neglected to claim within ten years after he had attained twenty-one, a second disability, viz. that of being sent beyond the seas in His Majesty's service, accruing before he attained twenty-one." Mr. Fearn wrote as follows: "As to what is stated to have been the opinion of Sir Lloyd Kenyon, I am to ob-

serve, that the point upon which that opinion was given was different from the present, as is respected, the title not of any person to whom the right first accrued, but of one claiming under such a person, who died under a disability, expressly falling within the savings of the act. *It is the opinion I actually entertain, and should have delivered upon the same point*; and the words 'was then of age, and under none of the disabilities to which the saving clause in the statute extends,' do not express what would have been Sir Lloyd Kenyon's opinion in case the younger brother had been under any of those disabilities, but only serve to apprise us of his opinion."

In *Dillon v. Leman*, the mother of the plaintiff became entitled, in 1758, when the defendant entered, and he levied a fine in 1765, she being under coverture at the time, and under which she died in that same year, leaving the plaintiff, her son and heir, *entirely free from every disability*. No claim was made till 1787, when the plaintiff entered to avoid the fine. The Court held, that he was barred, the judgment being, "that the exception in the first branch of the statute 4 Hen. 7, and the proviso at the end of it, were to be taken together; that being so taken, they did not amount so much to an exception as a saving, the true meaning of which was, that the rights of those persons who were under disabilities, and of their heirs, were saved as long as the disabilities continued, and five years afterwards, but no longer; therefore, that the heir, not being himself disabled, was barred, unless he pursued his right within the five years after it accrued by the death of his ancestor, dying under a disability." True it is, that the Court did not express what would have been its opinion in case the plaintiff had been under a disability; the judgment, however, adopting the language of Mr. Fearn, served to apprise us of what would have been its opinion. Mr. Atherley, in his edition of the Touchstone, has, upon the authority of *Dillon v. Leman*, given the following note upon the passage to which Mr. Preston's statement is annexed: "*The heir, supposing him to be free from disabilities, will be barred, unless he asserts his right within five years from his ancestor's death*;" which note is supported by *Cotterell v. Dutton*, 4 Taunt. 839, where it was held, that "the infant heir of a *feme covert* has ten years after the disability ceases; not from the death of her mother;" and Mr. Justice Chambre said, "the ten years do not run at all while there is a continuance of disabilities." This case, it is admitted, arose on the statute of James; but, as it was observed by Abbott, C. J., in *Murray v. East India Company*, 5 B. & A. 215, that "the several statutes of limitation being all *in pari materia*, ought to receive a uniform construction, notwithstanding any slight variation of phrase, the object and intention being the same;" and Mr. Justice Richardson said, in *Tolson v. Key*, 3 B. & B. 227, "*I think it unnecessary to advert to the Statute of James; but if I were to do so, I should think it right to put the same construction on all the statutes of limi-*

tation, pursuant to the dictum of Abbott, C. J., in *Murray v. East India Company*." It is humbly submitted, that the above observation of Mr. Preston, in p. 32 of the Touchstone, is not law. C. S.

THE LEGAL REMINISCENT.

No. II.

In the absence of our worthy contributor, who commenced this series of papers some time ago, we avail ourselves of "The Note-Book of a Retired Barrister," from Fraser's Magazine of this month, in which the *Lincoln's Inn Corps*, commanded by Sir William Grant, and the *Law Association*, commanded by Lord Erskine, are recorded, with some descriptive sketches, that we anticipate will not be deemed uninteresting. The extract which we purpose making is preceded by several remarks on the late Lord Ellenborough, as a Barrister and a Judge, and proceeds as follows:—

"He was a member of the *Lincoln's Inn Corps*, to which I also belonged. It was a joke of the day against him, that the sergeant who was employed to drill us said, 'Mr. Law was the only person he could never teach to march, and that he would never make a soldier.' The sergeant was a fellow of some humour, and was not unsparing of his remarks on his recruits, nor did Mr. Law engross the whole of his comments on their merits. There were other members of the awkward squad, who afterwards rose to eminence at the Bar, but who, as soldiers, could never rise above the ranks. He used to say that he could never make Mr. Mitford hold up his head, nor Mr. Gibbs turn out his toes. The justice of which remarks, those who remember these learned persons will fully allow.

"That corps was formed when all ranks of the people were arming, from the alarms of invasion and of domestic revolution. The members of the Legal Profession were not the last to enrol themselves for military service. The corps was, however, not wholly composed of members of the Bar or attorneys, but admitted into its ranks every description of respectable persons who were in any way connected with the Profession. Of this description were the officers of the Court, and the stationers and their clerks employed in professional business in the neighbourhood of the Inns of Court. Sir William Grant, then Master of the Rolls, was chosen to command us. He was selected for that honourable post, it being understood that he had been Attorney-General of Lower Canada, and carried arms at the siege of Quebec, when it was invested by the American

General Montgomery. He took the title of Major-Commandant; and our other officers were the Hon. Henry Legge, Templeman, and Pitcairn. We mustered about seventy, and numbered among us Lord Redesdale, Lord Ellenborough, Lord Chief Justice Sir Vicary Gibbs, Mr. Justice Dampier; and the heir-apparent of Lord Kenyon deigned to fall into the ranks. We were all military aspirants, but not with equal claims. The martial spirit of the times was found to supply the place of the corporal deficiency, arising either from old age or unwieldiness of person, which too full a habit of body had occasioned.

"The members of the Bar usually formed the front rank, though neither the best-looking soldiers, nor best-drilled recruits. Dampier was always the right-hand file of the line. His figure fully entitled him to that place; and his appearance realised Homer's description of his hero who was

Ἕκτορος ἀνδρὸς ἡρώδης καὶ ὀφειλόμενος

He stood, to use a soldier's phrase, six feet, two or three in his stocking-feet; his tread in marching was ponderous, and conveyed the full idea of Sergeant Kite's panegyric on the recruit whom he wished to enlist, 'that he stepped like a castle.' Lord Redesdale was always my left-hand file, and was one of the most regular at the drill of any of the company. The front rank graduated down from six feet two to five feet three or four—from Dampier to the Hon. Mr. Kenyon and Sir Vicary Gibbs. These were often put by the sergeant into the rear rank, on account of their mean and unsoldierly appearance; and as they were always paired off together, Dauncey gave them the whimsical names, from the *Recruiting Officer*, of Thomas Appletree and Costar Pearmain; but he could not apply Farquhar's character of them to Sir Vicary Gibbs, 'that two honest and simpler lads' were not in the company.

"The two best recruits of our corps were Dauncey, afterwards a King's counsel, and Stebbing, then a commissioner of bankrupts. They were nearly of the same height; both remarkably dapper in their persons, and spruce in their accoutrements. Dauncey was a good soldier, and was raised to the rank of corporal in the Law Association, when the *Lincoln's Inn Corps* was disbanded. But Stebbing deserted us from a curious cause. He usually wore a cocked hat; and when he sat as a commissioner of bankrupts, he assumed no small share of importance. On these occasions, he invariably appeared at the commissioners' table in the cocked hat, to which he was so peculiarly attached, that during the sitting it was never moved from his crown. The hats of the *Lincoln's Inn* corps were round, surmounted with black bearskin across the crown. A tall red and white feather, composed of the hackles of a cock, rose in front of it, and presented a martial and grenadier-like appearance. But all that military gaiety had no charms for Stebbing; he could not be reconciled to a round hat, and pined for his pinch. He never

came to the parade that he omitted his malediction against the bad taste of Sir William Grant and the martial ornament with which he had chosen to ornament his head, which was contrasted with the more becoming beauty of that which he wore. He sighed for the resumption of his cocked hat; his regrets became insupportable, and he quitted the corps.

"Among others who carried firelocks in this memorable service, was a very excellent man, but a very bad soldier, Card, the head clerk of the Rules Office. He was very short in stature, and in circumference nearly as broad as he was long. That rotundity of shape materially interfered with the performance of his military exercises. When about to fire, and the order is given to make ready, the firelock is to be thrown from the left hand into the right, across the stomach. To the performance of this manœuvre Card's shape was peculiarly unfavourable. In throwing the firelock round, before it had performed half of its evolution, it fell on the toes of Card himself, and his bayonet either stuck in the head or knocked off the hat of the man in the front of him, as Card was always in the rear rank.

"Our parade was in Lincoln's Inn garden. There we marched and countermarched, from the iron rails in the new square to the front of the stone buildings, and from the stone buildings to the iron rails, and formed in echelons, with the pump on our left. It must, however, be admitted that our tactics were not always the most military, nor our evolutions performed in the best manner. When ordered, at the end of the parade, to halt, most of the front rank were slipshod, the rear rank having trod down the heels of their shoes; and when ordered to *stand at ease*, they usually *sat down* on the grass to enable them to pull them up. Notwithstanding, however, the talents of our commanding officer, and the rank of many of the privates, our military character was not splendid; and we merged into the Law Association, commanded by Lord Erskine."

SELECTIONS
FROM CORRESPONDENCE.
No. XVII.

EXAMINATION OF ATTORNEYS.

To the Editor of the Legal Observer.

Sir,

As I intend shortly to apply for admission in the Courts at Westminster, I have naturally thought a little of the examination to which I shall, and the examination to which I ought to be, previously subjected. I was, therefore, much pleased to see the question introduced in the Legal Observer last week, by the letter of G. W. But as my ideas do not correspond with his, I have ventured (for the sake of further discussion) to state them to you.

The only object, as it appears to me, to which it is advisable that any examination should be directed, is to the *respectability* and not to the *capacity* of the examinant. The profession labours under its present discredit, from the "sharpers," and not from the fools which it contains. No one is troubled with a stupid lawyer—if he is not competent, he is but little employed. In that little he certainly does not trouble his adversary; and if guilty of any glaring negligence, he is personally liable to his client. A stupid attorney is soon discovered, even by laymen, and he is a mere drone. But the case is different with the "sharpers." There are these among clients who will attend solely to the increase of their own purses, and these will employ such as (if need be) will consent to carry on unjust actions by unjust means. Attorneys who will consent to this, are such as often can, and often do, outwit their brethren; and it is from such as these, that the public and the profession—at least as I conceive—wish to be guarded.

It is obvious that all such examinations, &c. as have yet been proposed, are easily passed by such as I describe; nay, they are more easily and more creditably passed by the very persons you wish to exclude, than by those you are willing to admit.

If, therefore, I am correct in saying, that a man's own judgment, and the remedy by action which the law at present allows, is sufficient to protect him from the ignorance and negligence of his attorney, it follows that the only, or at least the chief, question is, whether any species of examination can be directed to the other object which I propose. If this could be accomplished, the profession would doubtless be greatly relieved from its present disgrace; but as I am not "full of expedients," I leave the matter to the attention of wiser heads, which I trust it will receive, for it is really an important question.

If the insertion of the above does not trespass too far upon your columns, it will greatly oblige,

Sir,
Your obedient servant,
and constant reader,
S.

City, Jan. 14, 1833.

ON THE DISSERTATION ON CONVEYANCING,
NO. VIII.—PP. 104, 141.

I am obliged to C. C. (*ante*, p. 141), for calling my attention to an inaccuracy of expression in p. 104, where I have used the words "ceases to run," instead of "does not begin to run." Subject to this alteration, and the introduction of the case of *Douglas v. Forrest*, 4 Bing. 686 (the note of which I had mislaid), where it was held, that "an executor is *not* *sunble* until he has acted, or proved the will; and therefore, until *such time*, the Statute of Limitations does not run;" in which *Jolliffe v.*

Pitt, 2 Vern. 694, was cited as an authority that "no laches could be attributed to a plaintiff for not suing whilst there was no executor against whom he could bring his action,"—it is respectfully submitted, that the point I have adverted to is maintainable upon that well-known, and at present admitted, principle of law, *Actus Dei nemini facit injuriam*. The legislature having limited the common-law right of a creditor to sue, to six years, it is submitted, that during that time laches are not imputable for not suing; and that a defendant would not be allowed to take advantage of his own wrong in delaying to act or prove. This question is so peculiar to personalty, that it cannot arise respecting real estate; and therefore the analogy fails as to the uniformity of the construction of all the Statutes of Limitation.

C. S.

SUPERIOR COURTS.

Rolls Court.

BOND.—INTEREST.—JURISDICTION.

The Master, in computing interest on a bond, is not to exceed the penalty, even though the obligor directed by a trust deed the sale of his estates, for payment of the principal and interest due and to grow due in his bond debts.

Creditors neglecting to take exceptions to the Master's report, or accepting an apportionment on the amount of their debt as found by the Master, are precluded from objecting afterwards to that report.

Semble, that the Lord Chancellor has no such jurisdiction as to order any matter to be set down for argument before the Master of the Rolls—sed quære.

Mr. Pemberton, in support of a petition presented on behalf of bond creditors of Mr. Robert W. Wynne, deceased, stated, that in the year 1805, Mr. Wynne conveyed certain estates to trustees upon trust, for payment of his debts, and, in the first instance, for payment of the principal and interest then due, and to grow due upon his bond debts. By his will, made in the same year, he directed other estates to be sold, and the produce thereof to be applied in aid of the trust fund, if that fund should not be sufficient for the payment of his debts. In a suit instituted, on his death, for the due administration of his assets under the will, the petitioners having brought in their claims under the usual decree, the Master reported, that the arrear of interest upon their bond debts considerably exceeded the principal; but that they were entitled only to an equal amount of interest and principal, or to the amount of the penalty of the bonds. The creditors were not, at that time, aware of the existence of the trust deed; and a suit having been subsequently instituted, for the purpose of carrying that deed into effect, the petition-

ers came in under a decree in that suit, as bond creditors to the amount found by the Master in the former suit, and they received a dividend apportioned to them, with the rest of the creditors, upon the whole amount of the debt found due to them. The object of the present petition was, to have the interest upon their bond debts paid to them up to the day of payment, according to the alleged terms of the trust deed, instead of its being limited to the amount of the principal, according to the finding of the Master in the first suit.

Mr. Girdlestone, Mr. Jacob, Mr. Goodeve, and Mr. Russel, appeared for various parties interested in opposing the petition, and contended, that the claim to principal and interest upon a bond debt could not be extended at law beyond the amount of the penalty; that the fair and obvious construction of the trust deed was, that the debtor pledged his estates to pay no more than he was legally bound to pay; and that even if that trust deed admitted of a different construction, the petitioners had precluded themselves from taking the benefit of it, by neglecting to make any exception to the Master's report, and by accepting an apportionment upon the amount of their debt as found by the Master, with the rest of the creditors.

His Honor was of opinion, that whatever the petitioners were entitled to claim under the trust deed, they could have claimed under the will; but the Master having reported that they were entitled only to the amount of the penalty of the bonds, and no exceptions having been taken, they were concluded by that report. It was much too late for the petitioners, after they had accepted of an apportionment in common with the rest of the creditors, to call upon the Court to undo all that had been done. But his Honor would not content himself with declaring his opinion on the point of form, for this was a case which involved very important considerations in point of principle. Admitting that these creditors had a right to all the benefit of the trust deed, as in respect of a trust which this Court had taken upon itself to administer, his Honor was of opinion, that the deed gave no title to more than the amount of the penalty of the bond. It was expressly a trust for the payment of the sums due upon the bonds, and the interest due and to grow due thereon. Now according to the doctrine of this Court, as declared by Sir William Grant, in the case of *Clark v. Lord Abingdon*, (17 Ves. 106), the interest to grow due upon a bond could not exceed the penalty. He was therefore of opinion, that upon principle, as well as upon the point of form, the petition should be dismissed with costs. *Hughes v. Wynne*, at the Rolls, Michaelmas Sittings, 1832. M. R.

A question of jurisdiction between the Lord Chancellor's and this Court, arose a few days after the above decision, under these circumstances:—Two sets of exceptions were taken to the Master's report, and one set was entered to be argued in this Court; the second was entered upon the Vice-Chancellor's paper. A petition was presented to the Lord Chan-

cellor by one of the parties to the suit, praying that the exceptions set down before his Honor the Vice-Chancellor might be struck out, in order that the party who set them down may be compelled to enter them before his Honor the Master of the Rolls; to be argued with the other set.

Mr. Knight and Mr. Gifflesstone opposed the petition, and submitted that the Lord Chancellor had no such jurisdiction; the Master of the Rolls was an independent, though an inferior Judge, in equity. The granting of the prayer of the petition would, in this case, have the effect of depriving the party of his chosen counsel; as by an arrangement between the leading counsel, for the furtherance of the business of the Courts, some of them—and among them the counsel who had to argue those exceptions—did not now practise in the Rolls Court.

Mr. Peppas, with whom was Mr. Parker, in support of the petition, did not make any reply to the objection as to the arrangement between counsel. They did not think that a question of jurisdiction was raised; as the petition only prayed that the exceptions set down before the Vice-Chancellor be struck out; but if his Lordship should be of opinion that it was, then they would contend that the Rolls Court was subject to the Lord Chancellor's authority; and his Lordship's authority to interfere with that Court, was expressly recognized by act of parliament (5 G. 2, c. 30). The next proof of such authority was, that no decree of his Honor was valid until signed by the Lord Chancellor.

The Lord Chancellor believed that there were no decisions upon this question of jurisdiction. It was raised before Lord Lyndhurst, C.; but he got rid of it by directing, that he would himself hear the part of the case on which the question arose, without prejudice to the proceedings in the Rolls Court. It was an important question; and he would direct a search for precedents, and speak to both their Honors upon it.

His Lordship, on a subsequent day, said he had consulted with their Honors, and that the question of jurisdiction was not necessary to be argued; as he himself was to hear the exceptions; and, at his request, the Master of the Rolls would hear them for him as a favor to himself.

INSOLVENT DEBTORS' ACT.—CONSTRUCTION.

It is not competent to a debtor to the estate of an insolvent, to object to a suit instituted against him by the assignee, that the latter had not produced proof of the written consent of the majority of the creditors for instituting such suit.

When the Master of the Rolls gave his judgment upon the main question in this cause, viz. that a legacy cannot be so limited as to be enjoyed by the legatee after becoming insolvent, as against the claims of his creditors, a so-

Vide ante, p. 127, L. O.

cond question, then raised by the defendant, was reserved for further consideration. That question was, whether it was competent for a defendant, debtor to an insolvent's estate, to object, in a suit brought against him by insolvent's assignee, that the latter had not the written licence of the majority of the creditors, as required by the act 7 G. 4. c. 57. § 32.

Mr. Bickersteth was heard upon the point.—The question appeared here to be, whether the words of the act were imperative, so as to compel the Court, upon the suggestion of the defendant, the debtor, to stop the suit, in the absence of proof that the written consent of the necessary number of creditors was obtained. That act was not intended for the benefit of the debtors, but for the protection of the creditors against the arbitrary and improper institution of suits by assignees. If such consent were indispensable, irremediable mischief would sometimes follow.

The Master of the Rolls was much inclined against the objection. The debtor, against whom such a suit as this was instituted, would, in his Honor's opinion, be discharged thereby from future claims. The creditors could not again resort to him for the same debt; and if the suit be successful, they are benefited; if not, and if the want of success was through the fault of the assignees, they would have their remedy against the latter. It was his own opinion, that the 32d section of the act was for the protection of the creditors, and that the objection of the defendant was unavoidable; but for the uniformity of decisions in this and the Common Law Courts, he would consult the Judges of those Courts.

His Honor, on the day before his rising for the Christmas vacation, said he had consulted three of the Judges; but as there were conflicting opinions, they would not give a decisive answer. They were inclined to the opinion, that the debtor defendant was not at liberty to make the objection, as he was protected by the suit instituted by the assignee, whatever might be the result; if it failed, he was exonerated from the debt. The written consent of the creditors was for their protection against the wanton waste of the estate. A suit by the assignee, without such consent, was at his own risk; and if it was not properly conducted he was liable not only for the costs, but also bound to indemnify the estate against the expenses.—*Piercy v. Roberts*, at the Rolls, 14th December, 1832. M. R.

Erratum.—Correct an error of punctuation in M. R.'s judgment, *Kidd v. Kidd*, p. 207, ante, by placing a full stop after "without reference to Sir Edward Sugden's Act."

CONSTRUCTION OF A WILL.

A gift of "all the rest of one's money," in his will, does not pass stock, that is, money in the funds, unless there are other words in

the will to explain that the testator meant the stock to pass, by the word "money."

The question in this case turned upon the construction of a will. The testator left a legacy of 100*l.* to his sister, 20*l.* to his nephew, and "the rest of his money" to be equally divided between his brother and sister, who were the plaintiffs. At the time of his death, the testator was possessed of 600*l.* 3 per cent. consols; 119*l.* in money, and a few articles of household furniture. The question was, whether the 600*l.* stock would pass to the brother and sister of the testator, under the words "rest of his money."

Mr. Jacob, for the plaintiff, contended, that the word "money," was clearly used by the testator in the ordinary and popular sense of the term, and intended to extend to the stock, of which the bulk of his property consisted. If a contrary construction were adopted, this absurdity would follow—that the testator had not only not left enough to satisfy his legacies, but that he meant to leave nothing to the persons who were evidently the objects of his bounty.

Mr. Rickerdesh and Mr. Goodhue, on the other side, maintained, that unless there was a manifest intention on the face of the will to extend the word *money* beyond the accurate or legal acceptation of the term, that word could not embrace stock; and there was nothing in this will to show that the testator intended to use the word in any other sense than its proper sense.

His Honor postponed giving judgment in this case, until he had looked into the authorities which were cited in the course of the argument at the bar*. On the 14th of December afterwards, his Honor gave his judgment. The testator, after giving some pecuniary legacies, gave "all the rest of his money," to his brother and sister, in equal shares, and then disposed specifically of certain personal chattels. There was a considerable sum of stock, as well as household furniture, not specifically noticed in the will; and the question here was, whether the gift of "all the rest of his money," passed the stock. At the hearing, he intimated his impression to be unfavorable to the affirmative of that question, and this impression was confirmed upon looking into the authorities. His opinion was, that the term "money" could not pass stock, unless there was something in the context to bear out that construction; and in this will there was no context from which he was to infer that the testator meant the stock to pass. The Court was not at liberty to overturn settled principles, whatever might be conjectured to have been the testator's intention. *Gooden v. Dutton*, at the Rolls Sittings after Michaelmas Term, 1832. M. R.

* The following were some of the cases cited; *Sutton v. Sharp*, 1 Russ. 146; *Quinn v. Butcher*, 1 Turn. & R. 265; *Beacoby v. Park*, 1 Sim. & Sta. 500; *Hearne v. Wigginton*, 6 Madd. 419; and *Gallini v. Noble*, 3 Mac. 691.

King's Bench Practice Court.

INSOLVENT DEBTOR.

The Insolvent Act does not protect persons taking the benefit of it from claims to rent accruing due after the defendant's discharge.

In this case an application was made to discharge the defendant, who had taken the benefit of the Insolvent Act, from custody, on the ground that he was detained for rent, alleged to have accrued due on premises, of which he was the original lessee, but the possession of which he had surrendered at the time he had taken the benefit of the Insolvent Act. The rent had become due since the insolvent's discharge.

Littledale, J.—The defendant is now detained for rent, which has accrued due since he has taken the benefit of the Act. But the Act can only free him from claims in respect of debts due at the time of his discharge.

Rule refused. — *Brooks v. Hutchinson*, Nov. 7th, 1832. K. B. P. C.

BAIL.—COSTS OF JUSTIFICATION.

What is a sufficient description of the residence of bail.

Where the costs of justification will not be allowed, although the bail pass.

On a bail appearing to justify, it appeared that he was described as "of 41, Leather Lane;" but that he did not sleep there. He, however, occasionally ate and drank there, and had a servant living there. A sale was advertised as about to take place at the house, when the person who went to make enquiries as to the bail went to Fetter Lane. The bail slept at a different place from Fetter Lane, and in lodgings. The bail was, however, found.

The bail was, under these circumstances, allowed to pass.

C. Phillips applied, then, for the costs of justification, under the third rule of T. T. 2 W. 4.

Littledale, J. thought that, from what appeared on affidavit and was disclosed by the bail, the plaintiff was authorised in compelling a justification.

Thompson's bail. Nov. 12th, 1832. K. B. P. C.

Exchequer.

AMENDMENT.—OFFICIAL ASSIGNEES.

Proceedings amended in an action at the suit of assignees of a bankrupt, by making the official assignee a joint plaintiff with the other assignees.

Humfrey, on the 23d inst., had obtained a rule to amend the proceedings in the action, by adding the name of the official assignee, as co-plaintiff with the two assignees chosen by the creditors, in whose name only the action had been commenced. An application to this effect had been before made to Mr. Baron

Vaughan, at chambers, who desired the application to be made to the full Court.

Follett now shewed cause.—They have misconceived their action. [Bayley, B.—Is there not a clause in the Bankrupt Act, that the official assignee shall *with the other assignees* be the assignees? ^a]. The defendant may have been going to trial, relying upon the objection as a ground of nonsuit. [Bayley, B.—If you will make an affidavit that you are defending on the ground of the omission, we will hear you.] There is nothing to amend by; the writ is by two plaintiffs; the declaration and issue by the same parties; then they apply for leave to add another. No such amendment has ever been allowed. The name of a defendant has been struck out, but no addition has been made to the parties in a suit. Suppose it were an action on a contract? [Bayley, B.—Here the action is by persons suing *as assignees* of a bankrupt, and one is omitted. Lord Lyndhurst.—One defendant has been struck out, in an action on contract.] That was first done in an action at the suit of a joint stock company. [Bayley, B.—A writ of error has been amended, by striking out the name of a plaintiff.] Yet not by adding one. [Bayley, B.—And by altering defendant's christian name.] [Lord Lyndhurst.—Can you make a special affidavit that you defend on that ground only? otherwise we will give leave to amend.]

Humfrey, *contra*, mentioned *Tabrum v. Tenant*, 1 Bos. & Pul. 481, where an obligee's name was allowed to be added ^b.

Per Curiam.—The rule must be absolute, the plaintiffs paying the costs of the amendment.—*Assignees of — v. —*, Nov. 26th, 1832. Exch.

SITTINGS IN THE EXCHEQUER.

(EQUITY.)

Hilary Term, 1833.

Saturday,	January 19	{ Exceptions to Answers, Pleas and Demurrers, Motions, Six Causes.
Thursday,	24	{ Further Directions, Six Causes.
Friday,	25	{ Petitions, Motions, Exceptions, &c. Six Causes.
Saturday	26	| Causes.
Tuesday,	29	| Motions, Causes.

^b 1 & 2 W. 4. c. 56. § 22.

^a That amendment, however, appears by the report to have been made *with the defendant's consent*: but the learned editors doubt the necessity of such consent. *Id.* note (d), 482.

NOTES OF THE WEEK.

INQUIRY INTO THE POWER OF THE INNS OF COURT.

We understand that directions have been given by the Home Secretary to the Common Law Commissioners, to inquire into the course of proceedings before the Benchers and Visitors of Lincoln's Inn, Inner Temple, Middle Temple, and Gray's Inn, upon the application of persons seeking to become students thereof, or to be called to the Bar.

It will be recollected that in July last, Mr. Harvey, on a motion for an address to his Majesty on this subject, was supported by twenty-six votes against two; but no resolution could be come to—the members being insufficient to form a house. He appears at length to have succeeded in obtaining an investigation of the evil.

This enquiry is not, however, so extensive as our Correspondent, a *Cestui que Trust*, has advocated; and we recommend attention to the able series of Papers under that signature, "on the Misapplication of the Revenues of the Inns of Court." Lectures on the several branches of the Law, by proper persons, and regular examinations previous to admission as Students and calling to the Bar, ought to be instituted.

OMISSION IN THE NEW RULES OF TRINITY TERM, 1 W. 4.

It may be important to point out to our readers an omission in Rule 3. of Trinity Term, 1 W. 4, with respect to the payment of costs. The words of the Rule are, "That if the notice of bail shall be accompanied by an affidavit of each of the bail, according to the form hereto subjoined, and if the plaintiff except afterwards to such bail, he shall, if such bail are allowed, pay the costs of justification; and if such bail are rejected, the defendant shall pay the costs of opposition, unless the Court, or a Judge thereof, shall otherwise order." If the bail are rejected, which of course can only be where they attend, the plaintiff will have the costs of opposition; but where they do not attend, notwithstanding the exception by the plaintiff, the Court has no power to order the costs of opposition. Even according to the old Rules, the costs could only be ordered to be paid by the defendant, where three notices had been given. Whether the Judges would, by a species of equitable construction of the Rule, hold, that

bail who did not attend, pursuant to exception, were in fact rejected, remains as yet undecided.

COMMON LAW COMMISSION.—LOCAL COURTS.

We are informed that the Common Law Commissioners are now engaged in completing a further Report. This will be the fifth publication of this learned and active body, and it will relate, as we understand, to Local Courts. We look for its appearance with some anxiety. It would be useless to speculate on the views of the Commissioners, when a short time will enable us to lay the document before our readers.

ANSWERS TO QUERIES.

Common Law.

HUSBAND AND WIFE. P. 195.

I think that the devise of the *rents* of *A.*'s real estate to *B.*, for her sole and separate use, coupled with the declaration that "her receipt (notwithstanding coverture) should be a good discharge," will pass the land itself to her for life. Per *Rokesby* and *Eyre*, Justices. *Bush v. Allen*, M. 1695. And it seems clear, from the cases of *Adamson v. Armitage*, T. 1815, Coop. Cha. Ca. 283; *Ex parte Ray*, 1 Madd. 207; and *Wingstaffe v. Smith*, 9 Ves. 623, T. 1804, that a bequest "for her own sole use and benefit," "for her own sole use," and "to her own use, independent of her husband," or a bequest of money "to be at her disposal," will pass a *separate estate* to her. And per Sir *J. Leach*, V. C., in *Wills v. Sayers*, 4 Madd. 411, "A Court of Equity will execute a trust for the sole and separate use of the wife, when the intention of the donor to that effect is unequivocally declared." Consequently, I think *B.* has the full control of all the interest already or hereafter to be paid to her, in pursuance of the *direction* contained in the will; the word *direct*, used in the will, raising a trust in her favor, which a Court of Equity would execute. H.

LIABILITY.—HIRED HORSE. P. 196.

1. In answer to the above query, I have to state, that the hirer is bound to take care; but he is not liable for accident or act of God (2 *Ld. Raymond*, 913); and to maintain an action for negligence against the bailee of a horse, for an injury done to it whilst in his possession, the bailor must give some positive evidence of such negligence. *Cooper v. Barton*, 3 Camp. 5, n. It cannot be any defence, the nondelivery of a certificate or stamp office ticket, as the hirer is liable to the penalty, as well as the licensed postmaster, of 20*l.*, for not delivering such ticket at the first toll-bar he shall pass through. W. H. H.

2. If it were purely an accident, and not through any fault of the horse, *A.* must be the sufferer, and make good the damage. It is no defence to say that *B.* did not give *A.* a certificate of hiring (by which I suppose is meant a ticket for the protection of the post horse duty), because, if *A.* like, he may inform against *B.*, who is liable to a penalty of 5*l.* for his neglect. P.

ELIGIBILITY OF QUAKERS TO SIT IN PARLIAMENT. P. 210.

In answer to the query of a "Durham Elector," I have to inform him, that a Quaker can certainly, by the 22 G. 2, c. 26, take his seat in parliament, and his affirmation will be as effective as the oath of any other person. The same principle is laid down in 6 G. 3. By the 8 G. 1. it is provided, that a Quaker can give evidence in *all* Courts of Justice, where, as well as in *all other places*, his affirmation shall be as binding as the oath of another person. But it appears that a Quaker *cannot serve on juries*, although the act of the 8 G. 1. mentions "*other places*," the wide signification of which the legislature appeared to be aware of, for in the 37th section of that act, there is a restrictive clause, by which it is provided, that no Quaker shall, *by virtue of that act, be qualified or permitted to serve on juries, or hold an office or place of profit in the Government*. It is therefore clear, that a Quaker *can sit in parliament*, and that he can give evidence in any of the Courts of Judicature; but that he is *not* eligible to serve on juries, and cannot hold any place of profit in the Government: the two latter appear to be the only disabilities which, in law, Quakers are subject to. J. S.

JUDGMENT CREDITOR. P. 195.

I am of opinion, that the plowings, and the crops arising therefrom, would be held to be liable to the judgment creditor. P.

Wills of Property and Conveyancing.

DEVISE. P. 195.

In answer to *A.*'s query, I would say, that inasmuch as both *C.* and *D.* survive *A.* (the testator), they respectively take vested interests in the fund to be produced by sale of the freehold estate: and therefore, although *C.* dies in the lifetime of *B.*, the party beneficially interested for life, I think *C.*'s husband will be entitled to his deceased wife's moiety. The proviso against the debts, management, &c. of the husband, will be of no effect, unless the fund be given to trustees for the separate use of the wife. P.

DEVISE.—JOINT TENANTS. P. 211.

1. Under the gift in question, James, John, and Jane would take as tenants in common, and not as joint tenants. W. G. C.
2. Wherever a real estate is devised to two

or more persons, and there are any words in the will indicating an intention that the devisees shall take several and distinct shares in it, they will be tenants in common. The words "equally to be divided," have always been held to create a tenancy in common, in a will, because they imply a division; whereas between joint tenants there is no division, unless there are other words in the will that expressly give a right of survivorship. *Blissett v. Cranwell*, 1 Salk. 226; *Prince v. Heylin*, 1 Atk. 493, and cases there cited. F.

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Vol. V.

SATURDAY, JANUARY 26, 1833.

No. CXXI.

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We thank "Fitzherbert" for his explanation.

The utility of the "Remarkable Trials" is questioned by a correspondent. It is true they seldom contain any point of law, but they describe the administration of criminal justice in former times, and we know are interesting to our readers in general. They are carefully abridged from voluminous works.

To "Mancuniensis" we beg to say, that it is our object to accommodate all classes of subscribers; and we shall attend to his hint so far as practicable.

We are sorry that the packet of an excellent Contributor was returned, on account of the non-payment of the postage. We are obliged to adhere to the general rule in that respect.

We shall most gladly promote the views of C. S., and will make enquiries.

A Correspondent has commended our prudence in restraining his zeal. We have various means of information, and shall not be lukewarm, when occasion calls; but public opinion must accompany us, or we shall strive in vain.

The Queries and Answers of "W. G. C." "T. T. P.;" "J. W.;" and "F.," will probably appear next week.

The Legal Observer.

Vol. V. SATURDAY, JANUARY 26, 1833. No. CXXI.

—"Quod magis ad nos
Pertinet, et assidue malum est, agitamus."

HORAT.

ON THE SEPARATION OF THE POLITICAL FROM THE JUDICIAL DUTIES OF THE CHANCELLORSHIP.

It will probably be well remembered by our readers, that on the last day of the last session of Parliament, the Lord Chancellor made a general statement of his future plans for Law Reform. In selecting that time for its delivery, it was evidently his intention, that during the vacation they should be discussed by the profession. The time has now arrived, when every word of his Lordship's speech becomes important, as it will doubtless be acted on; and we have thought it advisable, therefore, to transfer it to our Supplement for the present month. Since its delivery, a Bill in pursuance of a portion of it has been printed, and circulated in the profession. This we have already laid before our readers, and fully considered*. But as yet the most important part of the proposed plan of reform rests entirely on the speech; we mean, the separation of the judicial from the political functions of the Lord Chancellor.

In the place of any bill or scheme for effecting this alteration, we have been favoured with reports, which, as usual, have become magnified as they proceeded from mouth to mouth. One day we were informed that the Lord Chancellor intended to preside in the Ecclesiastical Courts. The next, in the Privy Council; and the story in Westminster Hall, at last, was,

that there was to be a general amalgamation of all the Courts, and that the Chancellor was to take them all by turns, on separate days of the week. These wild and witty notions originate in the opinion that something will be done as to the separation of the two functions now possessed by the Lord Chancellor—a very popular project: and we propose, therefore, shortly to consider how far it would be advisable, and if advisable, how it can be effected. In coming to a conclusion on the subject, we are not much assisted by the speech to which we allude, as the noble Lord did little more than state the present difficulties, and his desire to remove them.

The anomalous situation of the office of Lord Chancellor, as at present constituted, is obvious. He is a Judge—the highest Judge—removable at the pleasure of the Crown. He is a Judge necessarily mixed up in the politics of the day; and liable, and likely, to have his judgment biassed by his party feelings. At the same time, it seems equally clear, that in the Cabinet there must be a minister of justice; a lawyer of the highest eminence; capable of being entrusted with the most important secrets of the state in all their circumstances, and qualified, not only by past experience, but by continued legal duties, to give the best advice concerning them. It is also as important to the public as to the legal profession, that the Head of the Law should sit among the rulers of the land; that he should be clothed with supreme authority, and be inferior to none but the King; as the respectability and character

* See 4 L. O. 343, 363.

of the profession is thus insured, and a reward is offered worthy the acceptance of any subject. It seems also to follow, that this minister should be the first law officer of the Crown, and should therefore be remunerated more highly than any other. It would also appear to be clear, that the Chief Judge in Equity must also be remunerated as least as highly as the Chief Justice of the King's Bench.

If these principles be admitted, we should then enquire why any alteration should take place—if it be impossible entirely to separate the judicial from the political duties of the office—if it be necessary (and who can doubt it?) to ensure the efficiency of the law minister, that he should, more or less, continue in the exercise of his legal duties—why disturb the present arrangement? The answer is obvious. The present duties of the Chancellor are greatly too much for one man. They cannot all be discharged efficiently by a single mind. Long experience has proved this to be impossible. Men of the most extraordinary talents and the most unwearied industry have sunk under the burden. Moreover, as at present constituted, as the offices of Chief Judge in Equity, and Speaker of the House of Lords, are held by the same person; the mischievous absurdity of an appeal from a Judge to *himself* exists.

We think these reasons so sufficient to support a change, that we shall not go through the other defects of the present appellate jurisdiction in the House of Lords, as they have been repeatedly pointed out, as well by other writers as by ourselves. As far as it relates to the Court of Chancery, it has been strongly contended by Mr. Cooper, that it is an infringement of the constitution, and an assumption of an authority which belonged to the whole Parliament, of which the Lords formed only a part^b. However this may be, we all know the disrepute which attends that part of the present system which enforces the attendance of two peers by rotation, to go through the farce of assisting the presiding Judge; who lounge on the benches, read the newspapers, or fall fast asleep.

These being, as we conceive, the general principles of the subject, let us see what it is that is proposed. The plan of the Lord Chancellor appears to be this.—To create a Chief Judge in Equity, who shall hear all matters now heard by the Lord Chancellor,

in the Court of Chancery; and to constitute the Speaker of the House of Lords a separate office, who shall be a Minister of the Crown, the adviser of the Crown, and who shall hear appeals to the House of Lords. His Lordship is also of opinion, that the present salary awarded to the Lord Chancellor would be sufficient for both these Judges. The distribution of the duties here proposed, we think the proper one, if accompanied, as we presume it will be, by a division of the patronage now belonging to the office; but we confess we cannot see how the present salary of 14,000*l.* is to remunerate the two first, or, at any rate, two of the first Judges of the country, unless there be a general reduction of judicial salaries, which perhaps is contemplated.

One way suggests itself to us, indeed, by which the proper remuneration might be obtained without any additional burden to the country; and we feel satisfied that no prejudice on this point can exist in the mind of the present Chancellor. Let the new Chief Judge in Equity again have the supreme jurisdiction in bankruptcy, and thus supersede the present Court of Review, which has certainly not met with general approbation. With the addition that the salaries of the Judges of the Court of Review would give, a proper remuneration might be provided for the Speaker of the House of Lords and the Chief Judge in Equity.

THE PROPERTY LAWYER.

No. XI.

SHRUBS.

IN the eye of the law, a landlord has the possession of the trees on the land demised, though they are not excepted in the lease. 7 T. R. 13. 2 M. & S. 499. 1 Saund. 322, n. 5. The following case, however, decides that this rule does not apply to shrubs, even when they are cut down by a stranger. The facts were these:

The defendant, being in the occupation of land adjoining a field, let by the plaintiff to one Peter Wardell for a term of years, requested Wardell to lower a fence between the two properties. Some delay occurring, the defendant lopped the fence himself, but carried the cuttings to Wardell's, the plaintiff's tenant, who said at the trial, that according to the custom of the country he believed he was entitled to them. The hedge was cut by the

^b See Cooper's account of the Court of Chancery.

defendant in an unskilful manner; but the tenant said he thought it a good job, and that the fence was the better for it.

Jones, serj., obtained a rule nisi to set aside the verdict and enter a nonsuit, upon the authority of the third resolution in *Herlakenden's case*, 4 Co. 62, "That if trees, being timber, are blown down by the wind, the lessor shall have them (for they are part of his inheritance), and not the tenant for life, or tenant for years; but if they be dotards, without any timber in them, the tenant for life, or tenant for years, shall have them." And *Channon v. Patch*, 5 B. & C. 897, where a lessor, during the term, having cut down some oak pollards growing upon the demised premises, which were unfit for timber, it was held, that as a tenant for life or years would have been entitled to them if they had been blown down, and was entitled to the usufruct of them during the term, the lessor could not, by wrongfully severing them, acquire any right to them, and consequently he or his vendee could not maintain trespass against the tenant for taking them.

Bompas, serj., shewed cause.—In *Channon v. Patch*, the lessor himself had cut down the pollards, which during the lessee's term he had no right to do. To have allowed him, therefore, under such circumstances, to claim a property in them, would be to enable him to take advantage of his own wrong: but that decision is not incompatible with the lessor's having an immediate property in such things, when they are severed from the soil by the act of a stranger: for the resolution in *Herlakenden's case* must be considered to apply only to the tenant's *botes*. To the extent of what may be required for *housebote*, *firebote*, and the like, the tenant may have a property in underwoods; but as to the residue, the property must remain in the lessor. It is not pretended that the cuttings in question were required for *botes*; and the wrongful act of a stranger could not vest in the tenant what, previously to that act, was clearly the property of the lessor.

Jones, in support of this rule, relied on the authorities in Com. Dig. Biens. "Lessee for life or years has only a special interest and property in the fruit and shade of timber trees, so long as they are annexed to land. 4 Co. 22 b. Dy. 90 b. 1 Rol. 181. And therefore, if the lessee cuts down hedges or trees, not timber, the lessee shall have them. So, if dotards, &c., which have no timber in them, are thrown down by the wind, &c., the lessee shall have them. Mo. 812. So, if a man cut down timber trees, the lessee shall have trespass, in respect of the loss of his fruit and shade, though the lessor, or any one by his licence or command, cut them. 11 Co. 48 b. Mo. 7. Jon. 376.

Tindal, C. J.—This case requires the same determination as if it had been an action against the tenant; because what the defendant did, was adopted by the tenant, who carried away the cuttings, saying that it was a good job, and that the fence was the better for it. It is clear, that under such circumstances, no

action could lie for the tenant against Peacock; and it would be an over-refinement to say, that because a small portion more of a fence has been cut than the tenant is entitled to cut, the landlord has a right to claim it. Here indeed the complaint was rather as to the mode than the amount of the cutting; but the question now is, whether the property in the cuttings belonged to the landlord. Now according to the old authorities, the general property in trees is in the landlord, and the general property in bushes is in the tenant, although if he exceeds his right, as by grubbing up or destroying fences, he may be liable to an action of waste. We should be introducing a distinction, never drawn before, if we were to decide, that when a tenant cuts rather more than he ought, the property in bushes, so cut, passes to the landlord. The rule for entering a nonsuit, therefore, must be made absolute.

Gaselee, J.—In *Douglas v. Kendal*, (Cro. Jac. 256), it was laid down, that "the lord may not cut down any thorns, nor licence any other to cut them down; for the defendant prescribeth to have all the thorns growing upon the place; and that the prescription excluded the lord from taking any thorns there: but if he had claimed common of *estovers* only, then if the lord had first cut down the thorns, the commoner might not take them; and if he had cut down all the thorns, the commoner might have had an assise." The tenant has the general property in the cuttings of a hedge, whoever cuts it. If by his permission a stranger cuts improperly, so as to damage the fence, that may give the landlord a ground of action on the case; but the property in the cuttings is in the tenant.

Berriman v. Peacock, 9 Bing. 384.

REMARKABLE TRIALS.

No. XXII.

CASE OF M. D'ANGLADE FOR SUPPOSED THEFT. 1687.

The Count of Montgomery rented part of an hotel in the Rue Royale, at Paris. The ground floor and first floor were occupied by him; the second and third by the Sieur d'Anglade. The Count and Countess lived on a footing of neighbourly civility with Monsieur and Madame d'Anglade, and without being very intimate, were always on friendly terms. Some time in September, 1687, the Count and Countess proposed passing a few days at Villebousin, one of their country houses: they informed Monsieur and Madame d'Anglade of their design, and invited them to be of the party. They accepted it; but the evening before they were to go, they for some reason or other begged leave to decline the honour, and the Count and Countess set out without them, leaving in their lodgings one of the Countess's

women, four girls, whom she employed to work for her in embroidery, and a boy who was kept to help the footmen. They took with them the priest, Francis Gagnard, who was their almoner, and all their other servants.

The Count pretended that a strange presentiment of impending evil hung over him, and determined him to return to Paris a day sooner than he intended. Certain it is, that instead of staying till Thursday, as they proposed, they returned on Wednesday evening. On their coming to their hotel a few moments before their servants (who followed them on horseback), they observed that the door of a room on the ground-floor, where their men-servants slept, was ajar, though the almoner, who had always kept the key, had double-locked it when he went away. Monsieur d'Anglade, who was out when they came home, returned to his lodgings about eleven o'clock, bringing with him two friends, with whom he had supped at the President Roberts's. On entering, he was told that the Count and Countess were returned, at which, it is said, he appeared much surprised. However, he went into the apartment where they were, to pay his compliments. They desired him to sit down, and sent to beg Madame d'Anglade would join them; she did so, and they passed some time in conversation; after which they parted. The next morning, the Count de Montgomery discovered that the lock of his strong box had been opened by a false key, from whence had been taken thirteen small sacks, each containing a thousand livres in silver; eleven thousand five hundred livres in gold, besides double pistoles; and an hundred louis d'ors, of a new coinage, called *au cordon*; together with a pearl necklace, worth four thousand livres.

The Count, as soon as he made this discovery, went to the Police and preferred his complaint, describing the sums taken from him, and the specie in which those sums were. The Lieutenant of the Police went directly to the hotel, where, from circumstances, it clearly appeared that the robbery must have been committed by some one who belonged to the house. Monsieur and Madame d'Anglade earnestly desired to have their apartments and their servants examined; and from some observations he then made, or some prejudice he had before entertained against Monsieur and Madame d'Anglade, the Lieutenant of the Police seems to have conceived the most disadvantageous opinion of them, and to have been so far prepossessed with an idea of their guilt, that he did not sufficiently investigate the conduct of others. In pursuance, however, of their desire to have their rooms searched, he followed them thither, and looked narrowly into their drawers, closets, and boxes; unmade the beds, and searched the mattresses and the straw pallasses. On the floor they themselves inhabited, nothing was found: he then proposed ascending into the attic story, to which Monsieur d'Anglade readily assented. Madame d'Anglade excused herself from attending, saying she was ill and weak; however,

her husband went up with the officer of justice, and all was readily submitted to his inspection. In looking into an old trunk, filled with clothes, remnants, and parchments, he found a rouleau of seventy louis d'ors *au cordon*, wrapt in a printed paper; which printed paper was a genealogical table, which the Count said was his. This seems to have been the circumstance which so far confirmed the before groundless and slight suspicions of the Lieutenant of the Police, that it occasioned the ruin of these unfortunate people.

The Count insisted the money belonged to him. The Lieutenant of the Police accordingly seized this rouleau of seventy louis d'ors. He bade Monsieur d'Anglade count them; terrified at the imputation of guilt, and of the fatal consequence which in France often follows the imputation only, his hand trembled as he counted the money; he was sensible of it, and said, "I tremble." This emotion, so natural even to innocence, appeared, in the eyes of the Count and Lieutenant, a corroboration of his guilt. After this examination, they descended to the ground floor, where the almoner, the page, and valet-de-chambre were accustomed to sleep together, in a small room. Madame d'Anglade desired the officer of the Police to remark, that the door of this apartment had been left open, and that the valet-de-chambre probably knew why, of whom therefore enquiry should be made. Nothing was more natural than this observation, yet to minds already prepossessed with an opinion of the guilt of Anglade and his wife, this remark seemed to confirm it; when in a corner of this room, where the wall formed a little recess, five of the sacks were discovered which the Count had lost, in each of which was a thousand livres; and a sixth, from which upwards of two hundred had been taken. After this, no farther enquiry was made, nor any of the servants examined. The guilt of Monsieur and Madame d'Anglade was ascertained, in the opinion of the Lieutenant of the Police and the Count de Montgomery; and on no stronger grounds than the circumstance of finding the seventy louis d'ors, the emotion shewn by d'Anglade while he counted them, and the remark made by his wife, were these unfortunate people committed to prison. Their effects were seized. Monsieur d'Anglade was thrown into a dungeon in the Châtelet; and his wife, and her little girl, about four years old, were sent to fort l'Eveque; while the strictest orders were given that no person whatever should be admitted to speak to them. The prosecution now commenced, and the Lieutenant of the Police, who had committed the unhappy man, was to be his judge. D'Anglade appealed, and attempted to institute a suit against him, and make him a party, in order to prevent his being competent to give judgment; but this attempt failed, and served only to add personal animosity to the prejudice which the officer had before taken against Anglade. Witnesses were examined; but so far from their being heard with impartiality, their

evidence was twisted to the purposes of those who desired to prove guilty the man they were determined to believe so.

The proofs against d'Anglade were still insufficient; therefore it was determined to have him put to the tortures, in hopes of bringing him to confess the crime. D'Anglade appealed, but the Parliament confirmed the order, and the poor man underwent the question ordinary and extraordinary; when, notwithstanding his acute sufferings, he continued firmly to protest his innocence, till, covered with wounds, his body dislocated, and his mind enduring yet more than his frame, he was carried back to his dungeon. Disgrace and ruin overwhelmed him; his fortune and effects were sold for less than a tenth of their value; and though the evidence against him was extremely defective, sentence was given to this effect:—That d'Anglade should be condemned to serve in the galleys for nine years; that his wife should, for the like term, be banished from Paris, and its jurisdiction; that they should pay three thousand livres reparation to the Count de Montgomery, as damages, and make restitution of twenty-five thousand six hundred and seventy-three livres, and either return the pearl necklace, or pay four thousand livres more. From this sum the five thousand seven hundred and eighty livres, found in the sacks in the servants' room, were to be deducted, together with the seventy louis d'ors found in the box, of which the officer of justice had taken possession, and also a double Spanish pistole, and seventeen louis d'ors found on the person of Anglade, which was his own money.

M. d'Anglade was removed, according to his sentence; and after undergoing the severest hardships, died in the course of a few months. Some weeks after his death, several persons who had known him, received anonymous letters: the letters signified, that the person who wrote them was on the point of hiding himself in a convent for the rest of his life; but before he did so, his conscience obliged him to inform whom it might concern, that the Sieur d'Anglade was innocent of the robbery committed in the apartments of the Count de Montgomery; that the perpetrators were one Vincent Belestre, the son of a tanner of Mans, and a priest named Gagnard, a native also of Mans, who had been the Count's almoner. The letters added, that a woman of the name of De la Comble could give light into the whole affair. One of these letters was sent to the Countess de Montgomery, who, however, had not generosity enough to shew it; but the Sieur Loysillon, and some others who had received at the same time the same kind of letters, determined to enquire into the affair; while the friends of the Count de Montgomery, who began to apprehend that he would be disagreeably situated, if his prosecution of d'Anglade should be found unjust, pretended to discover that these letters were dictated by Madame d'Anglade; who hoped by this artifice to deliver her husband's memory from the odium which rested on it, and herself and her child from the dungeon in which they were

still confined. An enquiry was set on foot after Belestre and Gagnard, who had some time before quitted the Count's service. It was found that Belestre was a consummate villain, who had in the early part of his life been engaged in an assassination, for which he was obliged to fly from his native place; that he had been a soldier, had killed his serjeant in a quarrel, and deserted; then returning to his own country, had been a wandering vagabond, going by different names, and practising every species of roguery; that he had sometimes been a beggar, and sometimes a bully, about the streets of Paris, but always much acquainted and connected with Gagnard, his countryman; and that suddenly, from the lowest indigence, he had appeared to be in affluence; had bought himself rich clothes, had shewn various sums of money, and had purchased an estate near Mans, for which he had paid between nine and ten thousand livres.

Gagnard, who was the son of the gaoler of Mans, had come to Paris without either clothes or money, and had subsisted on charity, or by saying masses at St. Esprit, by which he hardly gained enough to keep him alive, when the Count de Montgomery took him. It was impossible what he got in his service, as wages, could enrich him: yet, immediately after quitting it, he was seen clothed neatly in his clerical habit; his expenses for his entertainments were excessive; he had plenty of money in his pocket; and had taken a woman out of the street, whom he had established in handsome lodgings, and clothed with the greatest profusion of finery.

These observations alone, had they been made in time, were sufficient to have opened the way to a discovery, which might have saved the life and redeemed the honour of the unfortunate d'Anglade. Late as it was, justice was now ready to overtake them. Gagnard, being in a tavern in the street St. André des Arcs, was present at a quarrel wherein a man was killed; he was sent to prison, with the rest of the people in the house; and about the same time, a man who had been robbed and cheated by Belestre, near three years before, met him, watched him to his lodgings, and put him into the hands of the Marechaussée. These two wretches being thus in the hands of justice, for other crimes, underwent an examination relative to the robbery of the Count de Montgomery: they betrayed themselves by inconsistent answers. Their accomplices were apprehended; and the whole affair now appeared so clear, that it was only astonishing how the criminals could ever have been mistaken. The guardians of Constantia Guillemont, the daughter of d'Anglade, now desired to be admitted parties in the suit, on behalf of their ward; that the guilt of Belestre and Gagnard might be proved, and the memory of Monsieur d'Anglade, and the character of his widow, justified; as well as that she might, by fixing the guilt on those who were really culpable, obtain restitution of her father's effects, and amends from the Count de Montgomery. She became, through her guardian, prosecu-

trix of the two villains; the principal witness against whom was a man called the Abbé de Fontpierre, who had belonged to the association of thieves, of which Belestre was a member. This man said that he had written the anonymous letters which led to the discovery; for that, after the death of d'Anglade, his conscience reproached him with being privy to so enormous a crime. He swore that Belestre had obtained from Gagnard the impressions of the Count's keys in wax, by which means he had others made that opened the locks. He said, that soon after the condemnation of d'Anglade to the galleys, he was in a room adjoining to one where Belestre and Gagnard were drinking and feasting; that he heard the former say to the latter, "Come, my friend, let us drink and enjoy ourselves, while this fine fellow, this Monsieur d'Anglade, is at the galleys." To which Gagnard replied, with a sigh, "Poor man, I cannot help being sorry for him; he was a good kind of man, and was always very civil and obliging to me." Belestre then exclaimed with a laugh, "Sorry! what, sorry for a man who has secured us from suspicion, and made our fortune." Much other discourse of the same kind he repeated. And De la Comble deposed, that Belestre had shewn her great sums of money, and a beautiful pearl necklace; and when she asked him where he got all this? he answered, that he had won it at play. These, and many other circumstances related by this woman, confirmed his guilt beyond a doubt. In his pocket was found a Gazette of Holland, in which he had (it was supposed) caused it to be inserted that the men who had been guilty of the robbery for which the Sieur d'Anglade had been condemned, were executed for some other crime at Orleans; hoping, by this means, to stop any farther inquiry. A letter was also found on him from Gagnard, which advised him of the rumours that were spread from the anonymous letters, and desiring him to find some means to quiet or get rid of the Abbé Fontpierre.

The proof of the criminality of these two men being fully established, they were condemned to death; and being previously made to undergo the question ordinary and extraordinary, they confessed, Gagnard upon the rack, and Belestre at the place of execution, that they had committed the robbery. Gagnard declared, that if the Lieutenant of the Police had pressed him with questions the day that d'Anglade and his wife were taken up, he was in such confusion, he should have confessed all.

These men having suffered the punishment of their crime, Constantia Guillemont d'Anglade continued to prosecute the suit against the Count de Montgomery, for the unjust accusation he had made; who endeavoured, by the chicane which his fortune gave him the power to command, to evade the restitution: at length, after a very long process, the Court decided, that the Count de Montgomery should restore to the widow and daughter of d'Anglade, the sum which their effects, and all the

property that was seized, had produced; that he should farther pay them a certain sum, as amends for the damages and injuries they had sustained, and that their condemnation should be erased, and their honours restored.

PRIVILEGES AND RULES OF PARLIAMENT.

To the Editor of the Legal Observer.

Sir,

Permit me to offer for your acceptance a few notes, taken on the perusal of a work of high authority, on the Privileges and Rules of Parliament, during a period of leisure from my ordinary occupation, forced upon me by illness. A new House of Commons, chosen under an untried system, and containing in its body members, to whose course of proceeding individually we must look with interest, being about to meet, I flatter myself these notes will prove generally not unamusing.

One of the members has shewn some dissatisfaction at the reported arrangement that the Speaker of the last House shall be the new Speaker. If that honourable member has an eye to the Chair, I beg to apprise him it will be necessary he should be present in the House when he is nominated. Furthermore, "It has been usual for persons, when proposed to be Speakers, to decline that office, from a sense of their own insufficiency, and, even on the steps of the chair, to beg of the House to excuse them:" and again, when presented to the King for his approbation, "to implore his Majesty to command his Commons to do, what they can very easily perform, to make choice of another person, more proper for them to present on such an occasion."

It behoves all to pay due attention to that important symbol, the mace. When the mace lies *upon* the table, it is a House; when *under*, it is a Committee. When the mace is out of the House, no business can be done. When *from* the table, and upon the Serjeant's shoulder at the bar, the Speaker alone manages, and no motion can be made. But if a witness be at the bar, and the mace upon the table, then any member may propose any question to the Speaker to ask a witness. No delinquent is to be brought in but by the Serjeant with the mace.

As to places in the House. If a member leaves a glove, or any other token, in the place, he makes the place his; but then he must be there at prayers, otherwise he loses his right. My author observes: "There never has been any determination of the House upon this 'important question;' but I rather believe the latter to be the true doctrine, and to have been the opinion of the oldest members as to practice:" and he adds, in a note, "The mentioning any thing upon this subject must appear very ridiculous to those who have not

been witnesses to many and very serious debates upon it." Members lose their right to their places by attending the Speaker to the House of Lords, when sent for by a message from the King. The right is also lost on a division, which often makes it material which side are to go out, in questions otherwise indifferent. On the opening of a parliament, the four members for London claim, and generally exercise, the right of sitting on the lower bench, at the right hand of the Speaker. This bench, by courtesy, and not of right, is generally left for members in office. Mr. Pulteney, however, when in the height of opposition, always sat on the Treasury bench. Of right, no member can claim any other seat than that which he has taken at prayers, or finds vacant on his coming into the House afterwards.

The steps in the gangways are not seats. In a discussion on this subject, one of the members syllogised thus: "A man ought not to be disquieted in his seat: A man may be disturbed in this passage;—therefore 'tis no seat."

As to which side is to go out on a division, my author instances very many cases. As a rule, it may, I believe, be stated, that the supporters of, or abiders by, a measure already fixed, remain in; while the opposers of it, or the supporters of a newly proposed measure, go out: and, as before remarked, those who, on a division, go out, lose their places.

When a member is elected on a writ issued after a general election, such member must (in order that he may be known to the House) be introduced by two other members, and is brought up to the bar, *making three obeisances to the Chair*. But such members as are elected at a general election are not introduced. It may be some comfort to an honorable member, whom I have in my mind's eye, to know this.

On the reception of peers and judges, the Speaker informs the peer, "that there is a chair for his lordship to repose himself *in*." The judge he informs, "that there is a chair for him to repose himself *upon*." That is, the latter is to rest with his hand on the back of it; and if several judges are introduced at the same time, there is but one chair for them all.

In a *House* a member may speak but once to a question, unless on new matter; in a *committee* as often as he pleases.

In 1604, the House appears to have made rules against "tedious" speeches, and "long" speeches; but that is a great while since.

A member speaking from the lower seat must have one foot on the floor.

An individual sitting in the House, without having taken the oaths, shall be accounted as a man not elected or returned. And, in such a case, a new writ was actually sent forth, as of course, and not by order.

I beg to assure the honorable member for _____, (let any new member, whose ambition runs high, fill up the blank) that he may safely accept of an embassy to the Russian, or any other Court, without fear of losing his seat.

I apprehend, that even a madman, unless his disease were incurable, would not be discharged when once chosen.

The same bill, or question, is not to be twice offered in the same session. In one case, however, a duty upon *leather* having been proposed and rejected, the same duty was again proposed, with this variation, that *skins and tanned hides* should be charged. The measure here spoken of, to recover the loss of the former question, Mr. Onslow characterized as mean, unparliamentary, and dangerous.

We observe in the newspaper reports of speeches in parliament, little parenthetical notes, such as "hear, hear;" "cries of question;" "laughter;" "renewed laughter;" "peals of laughter;" "roars of laughter;" "coughing;" &c. &c. &c. An entry on the journals runs thus: "On the 23d of January, 1693, to the end that all the debates in this House should be grave and orderly, as becomes so great an assembly, and that all interruptions should be prevented; Be it ordered and declared, That no member of this House do presume to make any noise or disturbance whilst any member shall be orderly debating, or whilst any bill, order, or other matter, shall be in reading or opening: and in case of such noise or disturbance, that Mr. Speaker do call upon the member 'by name' making such disturbance; and that every such person shall incur the displeasure and censure of the House." My author says, "I remember a story of Mr. Onslow, which those who ridiculed his strict observance of forms, were fond of telling: that, as he often, upon a member's not attending to him, but persisting in any disorder, threatened to name him: 'Sir, Sir, I must name you!' On being asked what would be the consequence of putting that threat into execution, and naming a member, he answered, 'The Lord in Heaven knows:' from whence they collected, that it was nothing but a threatening expression of his own, that would have no consequence at all. He might have referred them to the journal of the 5th of May, 1641, or the 22d of January, 1693, where they would have found, that if the Speaker is compelled to name a member, such member would thereby incur the displeasure and censure of the House."

The following quaint passage appears in the Parliamentary History of 1601: "Serjeant Heale speaking, said, 'The Queen hath as much right to all our lands and goods, as to the revenue of her crown.' At which all the members hemmed, and laughed, and talked. 'Well (quoth Serjeant Heale), all your hemming shall not put me out of countenance.' So Mr. Speaker stood up and said, 'It is a great disorder that this should be used; for it is the ancient use of every man to be silent when any one speaketh; and he that is speaking should be suffered to deliver his mind without interruption.' So the Serjeant proceeded; and when he had spoken a little while, the House hemmed again, and so he sat down."

Honorable members must mind what they

are about when a division is going forward, otherwise they may be made to vote with the very side to which they intended to be adverse. In 1780, a member, who had proposed to go forth, had, during the division, staid in the passage from the gallery into the House, behind the clock, and had not, during the telling, appeared either in the body of the House or in the gallery; but being discovered before the doors were opened, he was brought up by the tellers to the table, and was told "in." But if a member is in *Solomon's porch*, or in the Speaker's room, and did not hear the question put, he must, if any member insists on it, be told; but then he may be told "out," or "in," as he elects.

These gleanings I offer, Mr. Editor, should you lack better matter, for a spare column. If you adopt them, I may perhaps find more, which shall be at your service. I cannot conclude, for the present, in a better manner than by transcribing, almost *verbatim*, a passage from my author, Mr. Hatsell. He writes in 1785.

"It is very much to be wished, that the rules, which have been from time to time laid down by the House, for the preservation of decency and order in the debates and behaviour of members of the House, could be enforced and adhered to more strictly than they have been of late years. It certainly requires a conduct, on the part of the Speaker, full of resolution, yet of delicacy: but, as I very well remember that Mr. Onslow did in fact carry these rules into execution, to a certain point, the fault has not been in the want of rules, or of authority in the Chair to support those rules, if the Speaker thought proper to exercise that authority. *The neglect of those orders has been the principal cause of the House sitting so much longer of late years than it did formerly*; members not only assume a liberty of speaking beside the question, but, under pretence of explaining, they speak several times in the same debate, contrary to the express orders of the House. And though, as is said on the 10th of November, 1640, any member *may*, yet Mr. Speaker *ought* to interrupt them; for the Speaker is not placed in the Chair merely to read every bit of paper which any member puts into his hand in the form of a question; but it is his duty to make himself perfectly acquainted with the orders of the House, and its ancient practice, and to endeavour to carry those orders and that practice into execution. If, upon repeated trials, he should find that the House refuse to support him in the exercise of his authority, he will be then justified (but not till then) in permitting, without censure, every kind of disorder, *viz.*

"Members speaking twice or oftener in the same debate.

"Members speaking impertinently, or beside the question.

"Using unmannerly or indecent language against the proceedings of the House;

"Or against particular members.

"Using the King's name irreverently, or to influence the debate.

"Hissing or disturbing a member in his speech.

"Walking up and down the House, standing on the floor, in the gangways, or in the gallery.

"Taking books and papers from the table, or writing there, to the great interruption of the clerks.

"Crossing between the chair and a member that is speaking, or between the chair and the mace, when the mace is off the table.

"All these rules, I but too well remember, Mr. Onslow endeavoured to preserve with great strictness, yet with civility to the particular members offending; though I do not pretend to say that his endeavours had always their full effect. Besides the propriety, that in a senate composed of gentlemen of the first rank and fortune in the country, and deliberating on subjects of the greatest national importance, that in such an assembly, decency and decorum should be observed, as well in their deportment and behaviour to each other, as in their debates, Mr. Onslow used frequently to assign another reason for adhering strictly to the rules and orders of the House:—He said it was a maxim he had often heard, when he was a young man, from old and experienced members, 'That nothing tended more to throw power into the hands of administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, these rules. That the forms of proceeding, as instituted by our ancestors, operated as a check and controul on the actions of ministers, and that they were, in many instances, a shelter and protection to the minority against the attempts of power.'—So far the maxim is certainly true; and is grounded in good sense,—that, as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding; which have been adopted, as they were found necessary, from time to time, and are become the standing orders of the House; by a strict adherence to which alone, the weaker party can be protected from those irregularities and abuses, which these forms were intended to check, and which the wantonness of power is too often apt to suggest to large and successful majorities."

I am, Sir,

Your obedient servant,

ARCHIBALD ROSSER.

19, Great Ormond Street,

19th January, 1833.

THE LOCAL COURTS OF THE CITY OF WESTMINSTER.

THE subject of Local Courts is again about to attract public attention. The Common Law Commissioners continue to take evi-

dence, preparatory to their Report. We shall be prepared to discuss the measure, in whatever shape it may be presented. The reasons for establishing Local Courts (weak as they at first were), are greatly diminished since the proposition was introduced in the House of Commons by the Lord Chancellor, then Mr. Brougham.

For the present, we lay before our readers an extract from a publication we have received, bearing the title of "A Collection of Acts of Parliament relating to the City and Liberties of Westminster; to which are prefixed Introductory Remarks on the origin of the Franchise, and the rise, nature, and constitution of its Local Courts." By James Corder, Vestry-Clerk of St. Paul, Covent Garden.

"Many extraordinary privileges are annexed to this franchise, but of these several have been long disused; those remaining are the holding a Court Leet, the custody of a gaol, and the return of all writs and process. The Dean and Chapter also claim, under their grant, all escheats, deodands, goods of felons, waifs, estrays, fines, whether imposed by the King's Justices, or others within the franchise; and also the soil of the common, called Tothill Fields.

"The chief officer of the Dean and Chapter, for assisting them in the exercise of the privileges incident to their franchise, is a high steward, appointed for life. The chief duty of his office consists in holding and presiding at the several Courts belonging to the Dean and Chapter, and of these he is the Judge; but the office is, in fact, executed by a deputy steward, appointed by the high steward, with the approbation of the Dean and Chapter; the high steward is rather considered as the protector of their privileges than as their servant. The next officer of the Dean and Chapter, is the high bailiff, and him they usually constitute for life. The business of his office requires him to execute all writs and process within the franchise, to preside at the election of members of parliament, and also to attend the Courts of the Dean and Chapter, and obey all their precepts. He has also several important duties imposed upon him, in reference to the Court of Requests, for which he is remunerated by certain fees settled by the acts for constituting and regulating that Court. To this officer, the Dean and Chapter generally grant a lease, during the time of his continuing in office, of all fines and other forfeitures and perquisites, to which they are entitled, as lords of the franchise, at a reserved yearly rent. The other officers of the franchise are, a coroner, clerk of the market, and a keeper of the gaol. The grants of these offices, by the Dean and Chapter, are usually for the lives of the persons appointed to hold them. There are also a high constable and eighty petty constables, for the several parishes of Westminster, who are chosen annually at a Court Leet held for that purpose.

"The principal courts belonging to the honour or franchise, are a Court Leet and a Court of Burgesses. The latter was established by the 27th of Elizabeth, which is the first act in the collection, in which burgesses and assistant burgesses are directed to be appointed, and their powers and duties are set forth and defined, and divers regulations are enacted for the better government of the inhabitants, who, as the preamble states, were, even at that time, greatly increased. The criminal jurisdiction of this court is little more than a branch of that which anciently belonged to the Court Leet for Westminster; and of this the principal part, which consists in presenting and punishing persons for annoyances, and for selling by false weights and measures, is now exercised by the Jury of Annoyance, appointed by the steward and Court of Burgesses, twice in every year. The same jury may also present buildings in a ruinous condition, pursuant to the 14 Geo. 3. c. 78. § 70; but their jurisdiction or authority to examine into and present defective pavements, is repealed by the 3 Geo. 3. c. 23. § 15. "An Act to amend and explain an act of the preceding Session, for Paving, Lighting, and Cleansing the Streets and Squares of the City and Liberty of Westminster."

"The Court Leet is, without doubt, as old as the franchise itself, and formerly, it is probable, did not differ in its nature from the courts leet of other franchises of the like kind; but its present constitution depends chiefly on two statutes of the 29th and 31st Geo. 2, whereby the appointment of a Leet Jury is regulated, and the manner in which the Court is to exercise its jurisdiction, in the appointment of high and petty constables, is ascertained.

"The Court of Requests, respecting which it is now proposed to offer a few observations, is totally distinct from the Dean and Chapter's jurisdiction, and is established for the recovery of small debts within the city and liberty of Westminster, and that part of the duchy of Lancaster which adjoineth thereto. This Court is composed of Commissioners, appointed by the vestries of the several parishes in Westminster, on the 1st of May yearly; and its jurisdiction extends to hearing and determining suits, where the debt does not exceed forty shillings. When a defendant, living within the jurisdiction of this Court, is sued in one of the superior Courts, for a debt under forty shillings, he may plead the act for establishing that Court in bar. But if he omit to do so, the Court will not, after verdict, either enter a suggestion on the record that the defendant lived within the jurisdiction, or stay the proceedings. The jurisdiction of this Court, however, does not extend to any debt for any rent upon any lease of lands or tenements, or any other real contracts; nor to any debt properly belonging to the Ecclesiastical Court, although the same be under forty shillings."

SUPERIOR COURTS.

Lord Chancellor's Court.

CONTEMPT.

The publication of discussions at a meeting of creditors interested in a suit PENDENTE LITE, complained of by the defendants in the cause as misrepresentations of their conduct, is held to be a contempt of Court; and the writer, who has the information from a third person, whom he would not name, and who publishes the matter in the usual way of his employment as a reporter for a newspaper, and ceases to publish as soon as he learned that the publication gave offence, is ordered to be committed to prison for the contempt.

In a suit instituted by the plaintiffs, on behalf of themselves and all other creditors of the late Duke of York, who should come in to seek relief by, and contribute to the expence of the suit against his Royal Highness's executors for the due administration of his estate and effects, the usual order of reference to the Master was made. The greatest expedition had been used up to the obtaining of that order; but great delay took place in prosecuting the inquiries before the Master. Some of the creditors, not immediate parties to the suit, complained, after some years of this delay before the Master, and obtained from him leave to attend by solicitors named by them, upon every summons that should be afterwards taken out in the matter. Those solicitors accordingly attended several meetings before the Master. Publications soon after appeared in the newspapers, purporting to be reports of communications made by the solicitors, of the proceedings in the Master's office, to a committee of the creditors, for whom they were acting, and of the discussions upon them by the committee. No name was published, except those of the solicitors. Those publications imputed the delay in the Master's Office, and in collecting the testator's assets, to a collusion between the plaintiffs and defendants in the suit, and between their respective solicitors. They also imputed to the defendants a wilful waste of the estate, by allowing valuable effects of the testator to be appropriated to persons and purposes foreign from the trusts of the will; by neglecting to get in parts of the estate; by allowing more to remain in the hands of different persons named, on pretence of *liens* upon them for advances made to the testator. The defendants at length complained of these publications, and, by their solicitor, gave notice to the printer of one of the newspapers in which they appeared, of a motion to be made to the Lord Chancellor, to commit him to the Fleet Prison for contempt of Court; but intimated, that if the real author of the articles were given up, the motion against the printer would be abandoned. Mr. Farquharson, after some correspondence with one of the defendant's solicitors, avowed himself to be the

writer of the articles, and that he made them up of *oral information obtained at the meetings* of the creditors from one of them; he deemed it to be a breach of honor to give up the name of that individual.

Sir Edward Sugden and Mr. Wigram, on behalf of Sir H. Taylor and Sir B. Stephenson, two of the defendants in the suit, moved the Court, during the sittings after Michaelmas Term, for an order to commit Mr. Farquharson for contempt of Court, committed by him in publishing the articles in question, the greater part of which they read from the newspapers, and pronounced them to be libellous misrepresentations of the proceedings before the Master, and of the conduct of the defendants in the suit, and of the solicitors, calculated to interfere most injuriously with the authority of the Court, by attacking and misrepresenting parties, pending a suit. They read also the affidavits of the above named defendants, and of the solicitors, narrating the whole of the proceedings in the suit, and contradicting distinctly and *seriatim* all the imputations cast upon them by the newspaper publications, except the delay of two years in the Master's Office, which, the solicitor stated, arose from the continued illness of one their partners. They were well satisfied that Mr. Farquharson was not the author of these articles, but the mere channel of communicating them to the newspaper; and in his affidavit he admitted as much. His account was, "that being by profession a reporter for the newspapers, he heard of a meeting of the Duke of York's creditors, held at the Thatched House Tavern, St. James's Street, got the matter for these articles from *oral information obtained at the meeting from one of the Committee*; wrote out the articles, and sent them in the usual way to the newspaper, obtaining the usual remuneration for such reports." This statement in his affidavit, differed from that which he made to the solicitor on avowing himself to be the writer of these reports, and was not intelligible in itself. What was meant by *oral information obtained at the meeting from one of the committee*, was not very clear; nor was it certain that there was any meeting of creditors; for all this misrepresentation might be the concoction of the author's fancy. The defendants had no vindictive feeling against the newspapers, nor against Mr. Farquharson, and they were still ready to abandon the motion against him, as well as the printer, if he would give up the name of the real author; but if Mr. Farquharson wished to stand between that unknown person and the Court, and screen him from just punishment, he had only to blame himself for the consequence. After arguing the matter for nearly two days, they submitted that this gentleman was clearly guilty of contempt of the Court, and moved for an order of commitment. Among the authorities which they cited, were *Can v. Can*, Tur Pra. in Chan. in notis; *Deacon v Deacon*, 2 Russ. 607; 2 Ves. sen. 520; S. C. in 2 Dickens, 795; *Anonymous*, 2 Atk. 469; and *Ex parte Jones*, 13 Ves. 237, upon which last

decision by Lord Erskine, C. they very much relied.

The *Attorney General* and Mr. Bethel opposed the motion. They conceded, and desired it to be taken for granted, that Mr. Farquharson was not present at the meeting; and his supplementary affidavit explained what he meant by *oral information obtained at the meeting*. He was not present at the meeting, but made up his report from what he collected after the meeting, from a person who was at the meeting, but whose name he would not give up to the vengeance of the defendants, thinking himself bound in all the principles of honor not to do so, although that person had no intention of committing a contempt of Court, nor of misrepresenting the proceedings at the meeting; yet there may be good reason for his not wishing to give his name, to the ruin, probably, of himself and business and family. But can a charge of contempt be brought against Mr. Farquharson? He states, his business is reporting for the newspapers; that he sent these articles in the usual way, and received no more than the usual payment for them. He believed them to be true accounts of what passed at the meetings; he considered them to be matters of public interest, as they really were, both on account of the number of creditors, and of the station of the defendants and the testator, and of the extraordinary way in which the suit seemed to be conducted. Mr. Farquharson did not publish or question any order of this Court, or any paper in the Master's Office, giving only an account in the proceedings, not in the Master's Office, but at a meeting of the creditors; and the very moment he heard that the publication even of these gave offence to any parties, from that moment he ceased to communicate any further accounts. He, therefore, was innocent of contempt of Court. They distinguished this case from the circumstances of those which were cited as authorities on the other side; and they contended, Mr. Bethel more particularly, that in the proceedings in the suit, from its commencement, there was so much delay and apparent neglect in administering the estate, as well justified the creditors to interfere; and that their interference had the effect of expediting the proceedings and of adding to the assets.

The Lord Chancellor, in the course of the hearing, took occasion to repeat some of the observations which he made in giving judgment in the case of *Powis v. Hunter*^a. Every publication of proceedings pending a suit was, strictly taken, improper, and the Courts often made express orders against such publications. Having the power to make such orders, the Courts had the power to punish for such publication, without any order made, on being satisfied that it was contempt. There was a distinction between publication of proceedings of a body of creditors, and of proceedings in the Master's Office, which it would be well if the public were aware of. The Master's

Office was a public Court, though there may not be above four present, and both sides were heard there; but a meeting of creditors to discuss the proceedings in the suit was, strictly, a private meeting, although one hundred might be present; and no one had a right to publish their discussions, no more than he would to publish a consultation of clients and counsel at the counsel's chambers. His Lordship had no doubt that Mr. Farquharson was guilty of contempt in this case; but as that gentleman may think better on the matter, and as the parties moving against him were still willing to abandon the motion upon his discovering his informant, he (the Lord Chancellor) would leave him a *locus penitentie*, and would suspend his order of commitment until the first day of next term. He was the more inclined to extend the time, as, in case of his own absence in a remote part of the country, Mr. Farquharson could not have any benefit from his disclosure, if he should come to that resolution before term.

On the first day of term (11th of January) Sir Edward Sugden pressed for the order to commit. He read a further affidavit of Mr. Farquharson, still refusing to give up his informant, but explaining that he was a sincere friend of his, on whose integrity he relied for the truth of the information he had from him, and that he was not a professional man, nor clerk or servant of a professional man, nor aware of deponent's intention to publish the matter.

The *Attorney General* and Mr. Bethel were again heard against the commitment; and contended, upon this last part of the affidavit, that this unknown author was not guilty of contempt, and if he were now given up, the Court could not commit him. They submitted, that if he could not be committed, Mr. Farquharson could not be committed.

The Lord Chancellor mentioned the case of *The King v. Clement*, in which a fine of 500*l.* was imposed for a publication of a trial before it was concluded, and against the express order of the Judge, and made the order of commitment. His Lordship said, it was satisfactory to him to find that the professional gentlemen engaged for the creditors were now wholly free from all suspicion of being parties to these publications.—*Greenwood v. Taylor*, Westminster, January 11th, 1833, before the Lord Chancellor.

King's Bench Practice Court.

IRREGULARITY IN PROCESS.

Time for taking advantage of misnomer.

Dampier showed cause against a rule obtained by *Espinasse*, for setting aside the process for irregularity. The defendant had been rightly named in the body of the process, Thomas Arnold Goodman, but in the notice to appear the name was Goodwin. He contended, that this application came too late, as the process was returnable on the first day of

^a Vide *antè*, p. 206.

term (November 2d), and the rule had not been moved for until the eighth day of term (November 10th); and that as to the name being different, the party could not have been misled by it, as the notice was part of the writ in which the name was correctly given, and was in these terms: "You are to appear."

Espinasse, contra, submitted, that the rule having been granted, it was too late to take the objection as to time; and that as the defendant lived more than twenty miles from London, there was no unnecessary delay in making the application: that had the notice omitted the defendant's name altogether, it might have been sufficient; but having given a different name altogether, and one not even *idem sonans*, it was an irregularity; and he relied on *Jones v. Armitage*, 2 Bo. & P. 38.

Patteson, J., thought that the application came too late.

Rule discharged.—*Selby v. Goodman*, Nov. 3d, 1832. K. B. P. C.

AFFIDAVIT OF DEBT.

What is sufficient certainty in an affidavit to hold to bail.

Espinasse had obtained a rule to show cause why the bail-bond in this case should not be given up to be cancelled, on the defendant filing common bail, upon the ground of a defect in the affidavit of defendant. It stated the defendant to be "indebted to the plaintiff for goods sold and delivered by the said William to the said W. D. H., and on a balance of accounts as agreed upon," but did not state by or between whom they had been settled and agreed upon.

Hutchinson showed cause, and submitted that there was sufficient certainty as to the balance of accounts, by referring to the previous part of the affidavit, which stated the goods to have been sold by the said plaintiff to the said defendant.

Littledale, J., however, held that it was insufficient.

Rule absolute.—*Martin v. Knacles*, Nov. 3d, 1832. K. B. P. C.

Exchequer.

BAIL.—COSTS.—BAIL-BOND.

Where proceedings have been taken on the bail-bond, before the bail came up to justify, the payment of those costs cannot be insisted on as a preliminary objection.

Upon bail coming up to justify, *Steer* objected, that proceedings having been taken upon the bail-bond, the costs of those proceedings ought to be paid before the bail were allowed to justify: but *Bayley, B.* said, that was no

objection; for the proceedings on the bail-bond could only be staid upon payment of costs.—*Wilson's bail*, Exchequer full Court, January 11th, 1833.

BAIL.—AFFIDAVIT OF JUSTIFICATION.

If the affidavit of justification states that the bail are "possessed" of a certain sum, instead of "worth," the affidavit is insufficient, and time will only be given on payment of costs.

Channel objected to the affidavit of justification, that the word "possessed" was used instead of "worth;" and he referred to a case of *Simpson's bail* in this Court, in which that was held to be a good objection.

Jervis, contra, said this was country bail, and the affidavit followed the form given by the new rules of T. T. 1 W. 4. § 3, in which the word *possessed* is used. He submitted, that having followed the form that was sufficient; or if the plaintiff was not satisfied, time should be given without payment of costs.

Channel referred to the late rule of H. T. 2 W. 4. § 19^b, which is general, applying as well to country as other bail, and expressly says, that affidavits shall be deemed insufficient unless each bail swears he is *worth* the amount required, over and above his just debts.

The Court seemed at first inclined to the opinion that, taking the two rules together, the word *possessed* was equal to the word *worth*: but upon examination of the rules and the form of the affidavit, they held, that the defendant had not complied with the rules either in substance or form. Time was, however, given. The costs to be costs in the cause.—*Jones's bail*, Excheq. *Coram Lyndhurst, Bayley, Bolland, and Gurney*. January 11th, 1833.

EJECTMENT.—SERVICE OF DECLARATION.

Service of a declaration in ejectment upon the mother of the tenant in possession, is not sufficient.

Judgment against the casual ejector was moved for in this case, on an affidavit which stated the service to be by delivering the declaration, on the premises, to Mrs. Smith, who was either the wife or mother of the tenant in possession.

Bayley, B.—That is not sufficient: if she was the wife it would do; but not if the mother.

Rule refused.—*Doe d. Smith v. Roe*, Nov. 26th, 1832. Excheq.

WITNESS.—SUBPENA.—CONTEMPT.

This was an action for a surgeon's bill; and a lady who lived in defendant's house, being a material witness for the plaintiff, endeavours

^a *Vide Anon.*, 1 Wils.; *Vuger v. Delegal*, 2 B. & Ad. 571.

^a See the case, L. O. Vol. V. p. 64.

^b See rule, *ante*.

had been made to serve her with a *subpœna*, without effect. Upon the last occasion, it was sworn that whilst deponent was in conversation with the servant, a lady called to see the person wanted as a witness, and who was informed that she was at home, and was admitted up stairs: the servant, however, said that she would not see the clerk. Under these circumstances, *Chilton* moved that leaving a *subpœna* for her at the house might be deemed good service.

The Court enquired how that would get her into contempt?

Chilton.—The service of the *subpœna* being under a rule of Court, would enable us to sue her.

Bayley, B.—You can't swear that she keeps out of the way to avoid being served.

Chilton.—We swear that the lady was at home, and was heard speaking to the servant.

Bayley, B.—You might have gone up.

Lord Lyndhurst.—Is there any instance of such a motion?

Chilton.—None, that I have been able to find.

The Court refused the rule: observing that there was no instance of an action against a witness under these circumstances.—*Baines v. Williams*, Nov. 22d, 1832. Excheq.

EJECTMENT.—SERVICE OF DECLARATION.—MORTGAGEE.

Service of declaration in ejectment on a person described as mortgagee in possession, by delivering it to his attorney, who undertook to appear for him, is not sufficient, without an acknowledgment by the mortgagee.

Hughes applied for judgment against the casual ejector, on an affidavit of service on two tenants in possession, by delivering copies of the declaration to them; "and also on R. Tyne, whom this deponent has been informed and believes to, be mortgagee in possession, by serving the same on Mr Butler, whom this deponent believes to be Mr. Tyne's attorney, by giving the same to him at his office, who accepted the same for Mr. Tyne, and undertook to appear for him."

Per Curiam.—You don't swear to any acknowledgment by Mr. Tyne. It would be going further than we have gone yet. You may have your rule as far as regards the two tenants in possession, but not as to Tyne.—*Doe d. Collins v. Roe*, Nov. 26th, 1832. Excheq.

ATTORNEY'S ADMISSION.

If an attorney acts in a Court of which he is not admitted, proceedings will be staid, and he will be ordered to pay the costs; and it is not too late to apply even after issue joined and notice of trial given.

Kelly showed cause against a rule for setting aside proceedings on the ground that the plain-

tiff's attorney did not appear to be an attorney of this Court. He contended that the motion was too late after issue joined, and notice of trial. The attorney swears he is an attorney of K. B. and C. P., and is also a solicitor in Chancery; and from enquiries made of the officers of this Court, he understood that having been admitted of the Court of Chancery, he could practise in this Court.

Lord Lyndhurst.—Proceedings must be staid till another attorney is appointed, and the attorney must pay the costs of this motion.

Knowles, contra, urged that the proceedings were altogether irregular, and that there was no attorney's name indorsed on the process.

Bayley, B.—Yes there is, though not of this Court.

Rule absolute.—*Constable v. Johnson*, Nov. 26th, 1832. Excheq.

COPY OF RULE.—WAIVER.

If an imperfect copy of a rule is served, the party served must appear to it, and by such appearance he does not admit that he is properly brought into Court, so as to prevent him from taking the objection to the form of the copy rule.

Turner, on a former day in this term, had obtained a rule calling upon the plaintiff to show cause why the bail-bond should not be set aside and proceedings staid, on the ground of irregularity, with costs: the irregularity being, that this being a country action, the name and residence of the country attorney were not indorsed on the copy of the summons, but only the name of the London attorney, and the amount of debt and costs was not stated.

Milner, who showed cause, objected that the copy of the rule served on the plaintiff had no names at the top, either of the plaintiff or the defendant.

Bayley, B.—They will serve you *de novo*.

Turner, contra.—The original rule is right. If the copy is bad, the plaintiff ought not to have appeared here: he is not in Court.

Lyndhurst, C. B.—He is bound to come here in order to oppose.

Turner.—If the other side appears, I always understood it amounted to a waiver.

Bayley, B.—No: they only appear to take the objection.

It was ultimately agreed that the bail-bond should be delivered up, that the plaintiff should deliver a minute of the debt and costs, and not declare for six days.—*Wood v. Litchfield*, Nov. 23d, 1832. Excheq.

After an arrest in a foreign country, upon a judgment obtained there, the defendant, having escaped, may be again arrested here, in an action on that judgment.

Carrington applied to the Court for the discharge out of custody of the defendant, on the ground of his having been arrested a second time for the same cause of action. A judgment

for 8000*l.* had been obtained by the plaintiff against the defendant, in a Court in France, which, upon appeal to the Court of Cassation there, was confirmed. The defendant was arrested upon that judgment, and after being in custody four months, escaped and came to this country. He was now again arrested here, in an action upon that judgment, by a Judge's order, for the 8000*l.* He cited Com. Dig. Det. A. 2, that an action will not lie on a judgment after execution sued by *elegit* or otherwise, for he has chosen another remedy, though the defendant taken in execution escapes^a; and contended, that upon the equity of that authority, the defendant was entitled to his discharge. But *Bayley*, B. said that case differed from this, for there the execution was in this kingdom; and the Court refused the rule.—*Aliner v. Furnival*, Nov. 23d, 1832. Excheq.

SCI. FA.—NOTICE TO BAIL.

Though the scire facias's on a judgment have been issued previously to the Rule of H. 2 W. 4, which requires notice to be given to the bail, still judgment cannot be signed on such sci. fa.'s without complying with that Rule; and giving a rule for appearance is not sufficient.

Comyn moved to enter up judgment on a *scire facias*.—The Lent writ was returnable three weeks from the Holy Trinity in 1825, and a rule for appearance had been entered every term; but it is not sworn that notice has been given to the bail, according to sect. 81. of R. H. 2 W. 4. reg. 1.

Bayley, B.—Your rule for appearance is nothing. It is not served. We want to annihilate the practice of taking proceedings behind parties' backs. Here the judgment is seven or eight years old.

Notice to be given to the bail.—*Kennedy v. Lord Orford*, Nov. 26th, 1832. Exch.

ARBITRATION.

The mere fact of an arbitrator being indebted to one of two parties, is not of itself sufficient to set aside an award, though the other party was ignorant of the circumstance, and objected to the arbitrator's proceeding as soon as he knew of it.

Maule and V. Williams showed cause against a rule for setting aside an award, on the ground of misconduct in the arbitrator. The action came on to be tried at the last Carmarthen Assizes, and was referred to a Mr. Walker Wright, who ordered a verdict for the plaintiff, for 58*l.* 7*s.* 8*d.* In the first place, it is said, that the arbitrator gave more than we claimed, we having, in the first instance, demanded only

^a The authority cited by *Comyn* for this position, is 1 Roll. Ab. 601. l. 32; upon reference it will be seen that *Rolle*, who quotes the Year Book 11 H. 4. 45. mentions it with a *dubitatur*.

50*l.*; but that we swear to have been a mistake: the action was brought on a note of hand for 50*l.* and for 8*l.* 7*s.* 8*d.* the balance of an unsettled account. The misconduct of the arbitrator is endeavoured to be established, by alleging that he examined the plaintiff himself to prove his own case, and that the arbitrator was indebted to the plaintiff in a large sum of money, and had been so for some years; and that that fact was concealed from the defendant, who objected to the arbitration going on before Mr. Wright, unless, at all events, some one was joined with him. With respect to the plaintiff having been examined, it appears that the defendant was sued as administratrix with the will annexed: the handwriting of the intestate to the note was admitted, but she insisted it had been paid; and under those circumstances the arbitrator examined the plaintiff, who was the only person who could give him information about it. The only important objection to the arbitrator is, his being indebted to the plaintiff, and that he is said to be in difficulties; but that of itself is not sufficient. It is true there was a sum of money out at interest in the plaintiff's hands; but we swear we believe him to be a gentleman of property and integrity, and it might be the plaintiff's own wish that the money should remain out at interest instead of being paid: we also swear that the arbitrator owed money to the defendant's mother: at all events no case of corruption has been made out to induce this Court to interfere.

John Evans, contra, endeavoured to support the rule. He contended that the circumstance of the arbitrator being indebted ought not to have been concealed from the defendant, and that a case of strong suspicion had been made out. It was not necessary to show actual corruption or undue motive. *Per Lord Hardwicke*, in *Shepherd v. Brand*, C. T. Hardw. 53. A witness for the defendant proved that the plaintiff had admitted the note to have been satisfied, by commission due to the intestate on sales and otherwise: the plaintiff ought not to have been called to prove his own case. If we had been aware that the arbitrator had been under any pecuniary obligation, we should not have agreed to refer to him.

Per Curiam.—We think the arbitrator did right in examining the plaintiff: the handwriting was admitted: he was put upon his oath by the arbitrator, as to whether the money had been paid: that was more for the security of the defendant than for the plaintiff's benefit, for the note remaining in the plaintiff's hands, the presumption was that it had not been satisfied. No case has gone the length of saying that an award can be set aside because the arbitrator was indebted to one of the parties: it is certainly a matter of suspicion, but it is not of itself sufficient; no corruption is shown. The other objection has been explained. The rule must be discharged, but without costs.—*David Morgan v. Margaret Morgan*, Nov. 23d, 1832. Excheq.

KING'S BENCH SITTINGS,

After Hilary Term, 1833,

Before the Right Honorable Sir THOMAS DENMAN, Knight, Lord Chief Justice.

MIDDLESEX.	LONDON.
<i>Common Juries.</i>	<i>Common Juries.</i>
Friday . . Feb. 1	Saturday . . Feb. 2
Monday 4	Thursday (the Ad- ment Day) . . 14
to	to
Friday (inclusive). 8	Thursday(inclusive)21
<i>Special Juries.</i>	<i>Special Juries.</i>
Saturday . . Feb. 9	Friday . . Feb. 22
to	to
Wednes. (inclusive) 13	Thursday(inclusive)28
Thursday . . . 14	
(by adjournment)	
<i>Mayer of Liverpool v. Bolton.</i>	

CIRCUITS OF THE JUDGES.

THE Circuit Paper, of the times and places of holding the assizes, is not yet published ; but the Judges have chosen their circuits, viz. :

MIDLAND.—Lord Chief Justice Denman and Mr. Justice Bosanquet.

HOME.—Lord Chief Justice Tindal and Lord Lyndhurst.

WESTERN.—Mr. Justice Park and Mr. Justice Littledale.

NORFOLK. — Mr. Baron Vaughan and Mr. Baron Bolland.

OXFORD.—Mr. Justice James Parke and Mr. Justice Taunton.

NORTHERN.—Mr. Justice Alderson and Mr. Baron Gurney.

NORTH WALES.—Mr. Baron Bayley.

SOUTH WALES.—Mr. Justice Patteson.

NOTES OF THE WEEK.

EXTENSION OF THE BANKRUPTCY COURT.

It is said, that not only will the administration of the Estates of Insolvents be transferred to the Bankruptcy Court, but all Trusts for the benefit of Creditors and Suits against Executors and Administrators :—in short, that all Insolvent Estates, whether of the living or the dead, will be brought under the jurisdiction of this kind of General Bankruptcy and Insolvent Court.

SHERIFF'S COURT, LONDON.

We are informed that the Sheriff's Court in London is no longer confined to eight Attorneys, but that any Attorney, being a Freeman of London, may now be admitted by taking his several admissions to the Town Clerk's Office, and afterwards attending a Court of Aldermen to be sworn. The 5th of Feb. is the first day for the admission of Attorneys under the new regulation.

ANSWERS TO QUERIES.

Ratio of Property and Conveyancing.

RECEIPT FOR CONSIDERATION MONEY.
P. 211.

1. The want of a receipt endorsed on the deed, is considered as notice that the consideration money has not been paid; and a purchaser would, if the transaction were recent, require a sufficient receipt or release to be obtained from the party to whom the money was payable, or his representative. But after the lapse of so long a period as twenty-seven years, the payment would be presumed, unless there were circumstances to rebut such presumption. I do not know of any means by which the party can be compelled to sign the receipt at the present time. W. G. C.

2. Whether a receipt is indorsed or not, is of little consequence in equity, for it would be of no avail if the money were not actually paid (though otherwise at law); but equity would presume payment after a great length of time. *Bidlake v. Arundel*, 1 Cha. Rep. 93. Under the circumstances stated, I should say the vendor could not insist on the receipt. F.

VOLUNTARY CONVEYANCE. P. 211.

1. A voluntary conveyance is unquestionably void, as against a subsequent purchaser for a valuable consideration, either with or without notice. See Sug. on Pur. 649, 8th ed. W. G. C.

2. Voluntary conveyances are in all cases void against subsequent *bona fide* purchasers for valuable consideration. *Leach v. Dean*, 1 Cha. R. 78. Although a purchaser has notice of a voluntary conveyance before he purchases, yet it will not affect him, and he will be allowed to hold the estate against the person claiming under such voluntary conveyance. *Doe v. Manning*, 9 East, 59; *Cormick v. Trapand*, 6 Dow. 60; *Buckle v. Mitchell*, 18 Ves. 101; *Smith v. Garland*, 2 Mer. 123; *Johnson v. Legard*, 3 Mad. 283; and *Hill v. Bishop of Exeter*, 2 Taunt. 69; *cum multis aliis*. F.

LIMITATIONS.—RECOVERY. P. 211.

Assuming that *A.* and *B.* are not baron and feme, or persons who may lawfully intermarry, by the first limitation *A.* would have an executed moiety (2 Roll. Abr. 417); so that he could suffer a valid recovery; and a contingent remainder in the other moiety would devolve on the heirs of *B.*, who takes no preceding freehold. By the second limitation, both of them would take several vested inheritances as tenants in common in tail, according to the rule in *Shelly's case*; and to bar the remainders over, they must suffer a recovery.

T. T. P.

Common Law.

JOINT AND SEVERAL PROMISSORY NOTE.
P. 211.

In answer to the question propounded by "W. W. C.," *A.* is undoubtedly liable on the note for the whole amount; and *C.*, in bringing his action against *A.*, may declare thereon as the several note of *A.*, although it appears on the face of it to have been drawn by him and another: see *Roberts v. Paeché*, 1 Burr. 322; and *Mountstephen and others v. Brooke and others*, 1 B. & A. 224.

J. A.

QUERIES.

Law of Property and Conveyancing.

PURCHASE.—MORTGAGE.

A. purchases an estate from *B.*, subject to a mortgage to *C.*, which he pays off out of the purchase money; in the purchase deed, to which of course the mortgagor and mortgagee are parties, there is a recital that "the principal and all interest thereon, up to the day of the date of, &c. has been paid;" but no receipt is endorsed. Is this recital a sufficient release to *B.* from the mortgage debt?

J. W.

COPYHOLD.

A. B., tenant for life, conceiving he was seised in fee, devised to *C. D.*, his heirs and assigns, who upon *A. B.*'s death, was admitted in fee accordingly. After such admission, the reversioner in fee surrendered, and released to *C. D.* Is *C. D.*'s title complete, or must he be again admitted?

A SUBSCRIBER.

Common Law.

OVERHANGING TREES.

Has a tenant a right to lop, or in any way meddle with trees belonging to, and standing upon the fence of an adjoining farm, the branches of which so overhang his lands as to prevent corn growing under them, in conse-

quence of which his crops suffer very materially every year; or has he any and what remedy?

A SUBSCRIBER.

MISCELLANEA.

DOWER.—CURTESY.

The reason of the difference why a wife, in case of an elopement with an adulterer, forfeits her dower, and yet the husband, leaving his wife and living with another woman, does not forfeit his tenancy by the curtesy, is, because the Statute of Westminster 2, cap. 34, does by express words, under these circumstances, create a forfeiture of dower; but there is no act inflicting, in the other case, a forfeiture of a tenancy by the curtesy. 3 P. W. 277. By the common law, a wife was entitled to dower, notwithstanding an elopement, accompanied with adultery; and though the statute bars it, yet it has often been taken so strictly, that the one without the other has often been held not to be within the statute. Certainly both together, though a bar to dower, would be no bar to her claiming a provision made for her by a jointure. 1 Atk. 275.

THE EDITOR'S LETTER BOX.

We have to add to our List of *Lawyers in Parliament*, the name of Mr. William Peter, the Member for Bodmin, formerly on the Western Circuit.

"A Subscriber" particularly wishes that it should be stated in the Queries, whether they arise on a *Will* or *Deed*; and that where they arise on a will, a *verbatim* extract should be given; otherwise it is often impossible to come to a right conclusion. We hope, however, that the questions will relate to extracts of reasonable limits.

The remarks of "Lector" shall be attended to whenever the pressure of matters of importance renders it desirable. In the mean time, we incline to pursue our accustomed course.

W. H. H. corrects a mistake he made (p. 196), in stating the penalty at 20*l.* for not delivering a ticket on the hire of a horse, instead of 10*l.*

We cordially thank J. J., and shall be happy to receive his future papers.

The Queries and Answers of M. P., J. J., W. G. C., F., Y. Z., H. A., E. W., S., P. Q., "Juris Consultus," F. N. L., A. B., T. A., and T. T. P., are unavoidably deferred.

We shall take an early opportunity of advertizing to the subject of G. G.'s communication.

The letters on the "Examination of Attorneys," arrived too late for this week's Number, but shall have early attention.

We hope to find room in our next for the remarks of "A Sentinel."

The Legal Observer.

VOL. V. SUPPLEMENT FOR JANUARY, No. CXXII. 1833.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

LEGAL CHRONOLOGY OF THE YEAR 1832.

HILARY TERM.

January 11.—The new Bankruptcy Court was opened at Westminster.

12.—The Court of Review met to swear in solicitors.

The Commissioners sat in Basinghall Street. General Rules and Orders in Bankruptcy were pronounced.

Mr. Serjeant Russell was appointed Chief Justice of Bengal, in the place of Sir Charles Grey.

24.—The Charter of Incorporation granted to the Members of the Law Institution, under the name of "The Society of Attorneys, Solicitors, Proctors, and others, not being Barristers, practising in the Courts of Law and Equity of the United Kingdom," was this day accepted by the Members.

The bill to amend the Vestries Act was thrown out.

The Arbitration Bill was again introduced by Lord Tenterden.

Mr. William Brougham proposed a bill for discharging prisoners for contempt for nonpayment of costs.

Bills for despatching business in the Court of Exchequer in Scotland, and for carrying on the business in the Court of Session, were brought in.

One hundred and ten New Rules were made, for rendering uniform the Practice of the Courts of King's Bench, Common Pleas, and Exchequer of Pleas; and seven other General Rules, were also pronounced.

NO. CXXII.

February.—Mr. Hill, the barrister, was appointed on the Common Law Fees Commission, in the place of Mr. Faulkner, who resigned.

Mr. Baron Garrow retired from the Court of Exchequer. Mr. Gurney was appointed in his stead.

The Arbitration Bill passed the House of Lords.

New regulations were made in all the Courts of Common Law, for the Taxation of Costs.

A Bill for the Registration of Births was introduced by Lord Nugent.

Mr. Praed, was elected Recorder of Barnstaple.

Mr. Joshua Rowe was appointed Chief Justice of Jamaica.

The Sheriffs' Regulation and Uniformity of Process Bills were brought in.

March.—A new order was made by the Court of Review.

The following Bills were brought in:—Sentence of Death; for abolishing the Punishment of Death in certain cases; and Attestation of Instruments.

New Orders of the Court of Review were pronounced.

EASTER TERM.

April.—New Common Law Rules were issued as to *Dies non* and Process.

Returns to Parliament were made from the Chief Registrar of the Court of Bankruptcy.

14.—The Hall and Library of the Incorporated Law Society were opened this day for the inspection of the Judges.

May.—Bills for examining witnesses

S

in Ireland, and for amending the Usury Laws, were brought in.

The Lunatics Bill passed the Lords.

Exchequer Court Officers' Bill brought in.

The Uniformity of Process and Equity Process Bills received the Royal Assent.

Serjeants Taddy and Merewether were appointed Attorney and Solicitor General to the Queen.

TRINITY TERM.

June 7.—The Reform Act for England and Wales received the Royal Assent.

Mr. John Wood was elected Recorder of York.

The Prescription Bill passed the Lords.

The Fourth Report of the Common Law Commissioners on Imprisonment for Debt was published.

July.—The Contempts in Equity Bill passed the Lords.

A Bill for abolishing the Punishment of Death in Cases of Forgery was introduced.

The Ecclesiastical Contempts Bill passed the Lords.

Mr. Spence brought in his bill to diminish the Expence and Delay of Proceedings in Chancery.

The York Assizes postponed on account of the Cholera.

August.—The Third Report of the Real Property Commissioners was published.

A Petition from the Incorporated Law Society was presented to the House of Commons by Mr. Freshfield, complaining of want of Accommodation in the Judges' Chambers.

The Royal Assent was given to the following Bills:—Prescription; Anatomy; and Remedies against the Hundred.

The Bills for the Abolition of Sinecures in the Court of Chancery, and for the Lord Chancellor's Salary, were brought in, and speedily passed both Houses.

An Amendment in the Bill for abolishing the Punishment of Death in Cases of Forgery was carried in the Cases of Wills and Powers of Attorney.

The Royal Assent was given to the following Bills:—Chancery Sinecures; Exchequer Court Officers; Bankrupt Act Amendment; Lord Chancellor's Salary; Forgery.

A Select Committee of the House of Commons reported on the General Registry Question.

Mr. Serjeant Spankie was promoted to the rank of King's Serjeant, and Mr. Beames, Mr. Swanston, Mr. Rolfe, and Mr. Joy, to that of King's Counsel.

The writs issued in the King's Bench from the commencement of Trinity Term to the 21st of August, were 7402; and in the Exchequer of Pleas, 8308.

The Lord Chancellor introduced his bill for the Improvement of the Administration of Justice in the Court of Chancery.

16.—The Parliament was prorogued.

Collins was tried for an attack on the King, and convicted of high treason; but his life was spared.

The number of Attorneys admitted from Michaelmas, 1831, to Trinity, 1832, inclusive, was 445.

MICHAELMAS TERM.

November.—Mr. Marriott was appointed Chairman of the Middlesex Sessions, on the retirement of Mr. Const.

General Rules were agreed upon by the Judges, pursuant to the Uniformity of Process Act.

4.—Lord Tenterden died.

7.—Sir Thomas Denman was appointed Chief Justice of the Court of King's Bench.

Mr. Serjeant Merewether received a patent of precedence.

26.—Sir William Horne was appointed Attorney-General, and Mr. Campbell Solicitor General.

A new regulation was made for issuing Writs in the King's Bench.

December 3.—The Parliament was dissolved, and a new Parliament summoned for the 29th January.

The Remanet Fees were reduced in the Court of King's Bench.

[An Obituary for the year 1832 will be given in the next Number.]

LAW OF ATTORNEYS.

No. V.

WHEN AN ATTORNEY MAY NOT ABANDON A CAUSE.

THE general doctrine on this subject, as laid down by Lord Tenterden in *Rowson v. Earle*, 1 M. & M. 538, is that an attorney is not compellable to carry on a cause, unless he is furnished with funds. The attorney (said his Lordship) has a right undoubtedly to say, he will not go on, unless he is furnished with the means to do so.

There must, however, be *reasonable notice* by the attorney to his client, of his intention to abandon the cause. In a recent case of *Hoby v. Built*, 3 B. & Ad. 350, it was held, that an attorney who was retained to conduct a cause at the assizes, could not

abandon it, on the ground of want of funds, without giving the client reasonable notice.

At the trial of the action, brought in *assumpsit* by the client against the attorney, and which came on before Mr. Justice *Bosanquet*, at the Spring assizes for Hereford in 1831, it appeared in evidence, that two actions were depending against the client, and that he had retained the attorney to defend them at the assizes: and the attorney, so late as Monday the 20th of March, 1831, (Thursday the 24th being the commission day at Hereford,) caused subpoenas to be issued in the cause, and on Saturday the 26th, the witnesses being in attendance, the causes were taken as undefended, and verdicts found against the client, on which judgments were entered up, and he was taken in execution. On the part of the attorney it was proved, that on Saturday the 18th of March (before the commission-day), the attorney came to the client with one Woodhouse, an attorney, and said that he had recommended Hoby (the client) to let Woodhouse prepare the briefs, and conduct the rest of the defence; and the client directed Woodhouse to do so; and Woodhouse then engaged to prepare the briefs and conduct the defence, on condition that the client would furnish him with funds to fee counsel. The client never did supply those funds, and briefs were not delivered. It further appeared, that Woodhouse had frequently before taken business into Court for the attorney, and managed it for him; and that on the occasion in question, he had charged him for the business done, and considered him (the attorney) as paymaster.

The learned Judge told the Jury, that the plaintiff, undoubtedly, was not entitled to recover, if it was agreed between all the parties that after Saturday the 18th of March, Built should cease to be the attorney; and he left it to them to say whether, after that time, Woodhouse acted as the attorney of Hoby, or merely as the agent of Built.

As to the other point, he was of opinion that, although an attorney who undertakes a cause is not bound, at all events, to proceed with it, if he is not supplied with funds, yet, that an attorney who has undertaken a defence with a view to trial, cannot abandon it on the eve of the assizes, without giving his client a reasonable opportunity of resorting to other assistance; and he directed them to consider whether the notice given in this case was, with reference to all the circumstances, reasonable in that respect. The Jury found a verdict for the plaintiff, with 166*l.* 10*s.* damages.

In the following Easter term, a rule nisi was obtained for a new trial, on the ground of misdirection; and the case was argued and determined on the 23d January, 1832.

The following is the judgment.

Lord Tenterden, C. J.—The learned Judge's direction was quite correct. If an attorney desires to quit his client, he must give him reasonable notice. It was left to the Jury, as a fact, to say whether reasonable notice was given in this case or not, and they have found that it was not.

Littledale, J.—The law was laid down most correctly to the Jury. There was not sufficient time to have the attorney changed between Saturday and Thursday; and there might have been a difficulty in the plaintiff's raising the money in that time. Under the circumstances of this case, the defendant should at least have had an application made to the Court to postpone the trial.

Taunton and Patteson, JJ., concurred.

Rule discharged.

The cases cited were *Mordecai v. Solomons*, Say. 172; *Cresswell v. Byron*, 14 Ves. 272; and 1 Sid. 31. See also *Maugham's Law of Attorneys*, p. 123, and the MS. case before Lord Eldon, cited there, of *Attorney-General*, at the relation of *Bradley*, v. ———.

PARLIAMENTARY REPORT.

[THE important matters announced in the following speech, and which, we understand, will shortly become the subject of Parliamentary consideration, induces us to lay the Report before our readers at this period.]

HOUSE OF LORDS.

Wednesday, August 15, 1832.

COURT OF CHANCERY.

THE *Lord Chancellor*.—My Lords, I rise to redeem the promise which I made some-time since, that before the close of the present session I should lay before parliament—not for the purpose of being carried, but that in order, during the recess, its details might be considered—a Bill for improving the administration of justice in the High Court of Chancery. This Bill contains some of the provisions of the Bill I formerly presented to your Lordships, and therefore upon those parts of it it will be unnecessary for me to trouble your Lordships with a single observation. But the Bill contains other provisions of very great importance, the nature of which I will state to your Lordships. In the first place, this Bill pro-

vides for the abolition of the Report Office, by which a considerable saving will be effected. In the next place it will provide for the regulation—a material regulation—and change of the Registrar's Office; and in this department also, a considerable saving will take place. It will then provide for those changes in that great and most important department of the Court of Chancery—I mean the Master's Office—to which I have on so many former occasions directed the attention of the House. I wish your Lordships to understand, that I consider the savings which will be effected by these changes by far the least important result which may be anticipated from them. It is right, however, that I should state what the amount of that saving will be. By the abolition of the Report Office, there will be a reduction of 4000*l.* a-year; by the changes in the Registrar's Office, a saving of 14,000*l.* a year will be effected; and by the alterations in the Master's Office a reduction of 13,000*l.* a-year will be made, producing a total saving of 31,000*l.* a-year. This reduction, however, is, as I before observed, of infinitely less importance than the very great improvement which, I humbly think, will be introduced, more particularly in the Master's Office, by the changes which this Bill is calculated to effect.

I have already stated to your Lordships, that these changes were recommended upon the grounds of expediency and necessity; I shall therefore relieve your Lordships from the fatigue of hearing again any observations upon that point. These changes address themselves to these objects, namely, to the throwing out entirely of that department of the Court of Chancery, the Master's Office, the branch of the system which pays the Master by fees upon the work done—to the entirely abolishing the worst part of the fee system in the Master's Office—I mean the copy-money, which gives an interest to those belonging to that department to increase—needlessly, and I may say vexatiously—the expense to the suitors; the expense being increased in an infinitely greater proportion than the sums actually raised by that bad mode of paying judicial men: to the abolishing that still worse system and abuse, grafted on the former bad one—I mean, the payment of gratuities—the legality of which is only unquestionable, because it has grown into a habit, which seems to have become permanent in that office. These changes will be important, considered with reference to economy, but incalculably more so when viewed as improvements in the administration of jus-

tice in this particular department. The Master will in future be paid by a salary instead of fees, by which a saving of at least 14,000*l.* a-year will be made. There are some other changes proposed to be made in this department, to which I will not now allude, as I do not wish to enter into much detail on the present occasion. I have, for reasons already given, postponed dealing with the department of the Six Clerks, and that of the Subpoena Office. Those departments, together with one or two other branches of the system, will be more conveniently introduced into one or two other legislative measures, which will be rendered necessary by the Act which has this day received the Royal Assent*. In addition to those other measures, there is a very important proposition which I shall feel it my duty hereafter to submit to Parliament, and which I hope and trust will be carried into effect—I mean, the constitution of a Court of Appeal in Chancery, by the substitution of a Court, composed of the heads of the Equity jurisdiction, for the single head of that Court—that single head at present constituting a Court of Appeal from another branch of Equity.

In addition to the three heads of the Equity Courts, I propose to place in the Court of Appeal the Chief Baron of the Court of Exchequer. But the Judge whose decision is appealed against, will, during the hearing of the case affecting his judgment, be excluded from this Court. The appeal to this Court will not be compulsory on the suitor, but by way of election,—so that he may either go to the High Court of Parliament, or to the Court of Appeal; but it is part of my plan, that from that Court of Appeal he shall not come to Parliament in the last resort, unless there shall be a diversity of opinion amongst the Judges. I likewise mean to add a provision, which I cannot help feeling to be of eminent importance, not only to the administration of justice, but to the proceedings of this House in the appellate jurisdiction:—I mean, giving your Lordships the power—(if by law you have it not, for there is some doubt on the point; if you have, my proviso will have only a declaratory effect: it will confer the power upon you by positive enactment)—of calling on the Judges in Equity, as you now call on the Judges at Law, to attend in this House to give you assistance in cases of appeal, for the purpose of helping you in your decisions.

I am perfectly aware that if this measure

* The Chancery Sinecures Abolition Act.

were to stop here, though a great improvement will be made, it would be felt that enough would not have been done; for it is my fixed and deliberate opinion, by which I am desirous of being understood to abide firmly, in spite of the objections from quarters which are entitled to great respect, to which I understand that opinion has been exposed,—that a very great change indeed is absolutely necessary in the constitution of the high office which I, undeservedly, have the honor to fill. I think that we cannot much longer remain in this country with that great—I will not say that gross and grievous, but only with that great, signal, and striking anomaly, that the highest judge in civil matters under the Crown is a minister of the Crown, and is removable at the pleasure of the Crown,—that to him is entrusted, sitting alone and without control, the disposal of property of an immense amount, and of rights and interests still more dear to the parties than any rights of property, however important. The Lord Chancellor is all this while removable at the pleasure of the Crown, and is also, whether he will or not, a political character, as well as a judicial one. I am sure that it is only necessary to glance at this subject, in order to fill your Lordships' minds with the ideas which at present press upon mine. I am certain, that much longer this anomaly cannot last. Why, then, what is to be done with that high office,—with that great public functionary? I propose merely to separate one branch of the Lord Chancellor's judicial functions—I mean that branch in which he sits and acts as a Judge alone—from his other functions;—from his political functions, and from the functions which he discharges as Speaker of this House, and from his function as adviser of the Crown; and also from that other function incident to the Speakership of this House—I mean the judicial function, in that appellate jurisdiction, not exercised by the Lord Chancellor alone, but in conjunction with, and it need be, under the control and superintendence of coadjutors of a judicial character. If these functions be no longer united,—if the Lord Chancellor shall be allowed to sit in this House under precisely the same circumstances as the other Judges, and in the Privy Council also,—when that important branch of appellate jurisdiction shall be new modelled by Parliament, as by an Act passed this session it is pledged to be, so as to be rendered a useful and efficient Court,—then, my Lords, the great anomaly of which I complain will be removed, with-

out any increase of patronage, and without a single shilling of additional burden to the public; and my opinion is, that the provision which has been made by Parliament for the sustentation of the office of Keeper of the Great Seal, is abundantly sufficient, if well applied, to maintain in due dignity the Lord Chancellor, as an officer of state and as the Chief Judge, irremovable and purely judicial, in the High Court of Chancery.

In effecting the changes which I have described to your Lordships, it may be necessary in another session, somewhat to new-model the salaries of some of the judicial officers of this country, and to diminish their amount in some cases; but I should not be doing justice to a most useful and learned Judge, and above all, to the office which he fills, if I did not say, that the keeping up of the salary of the Chief Justice of the Court of Common Pleas, so much higher than that of the Master of the Rolls, is, in my opinion, only tolerated by Parliament on the supposition that the Master of the Rolls, who ranks higher in his profession than the Chief Justice of the Common Pleas, has the advantage of a residence, which the latter does not possess. I owe it to my Right Honorable Friend, who fills the office of Master of the Rolls, to state that, with his usual disinterestedness, he has abandoned the advantage of his residence, by giving up to the public service, for which sacrifice no compensation (most improperly, as I think,) has been granted, and consequently there exists an inequality between his remuneration and that of the Chief Justice of the Common Pleas, who is his inferior in rank, and by no possibility his superior in usefulness or importance. I have, at present, merely glanced at this object, which will come before your Lordships more fully upon a future occasion.

With your Lordships permission, I may as well observe here, that I alone am answering to the measures which I am now suggesting, and that I must not be understood to speak in the name of my colleagues. The opinions which I have expressed in this House, and more fully elsewhere, not only remain undiminished, but the experience which I have had in office has incalculably increased their force.

Before I conclude my address, I trust that I may be allowed to allude to a charge which has been introduced into discussions connected with this subject on one or two occasions—(not however in this House, nor by any persons conversant with the finance department of the Court of Chancery,)—

respecting the Suitors' Fund. Some persons, from extreme ignorance on this subject, have stated that this fund has been dealt with, not by the Court of Chancery, but by the Parliament, in an unfair manner. Why, in point of fact, it has been dealt with as unfairly by one as by the other. The only difference between the two cases is, that it has not been dealt with by the Court at all, because the Court cannot touch it to the extent of a single penny; but a part of it has been dealt with by Parliament, in a usual and a fair manner. What, by a vague and general expression, is called "The Suitors' Fund," is composed of several branches. I will shortly and sufficiently explain the nature of this fund. The suitors in Chancery are entitled to immense sums of money, amounting to several millions, which are from time to time paid into the hands of the Accountant-General, and entered to the credit of their respective suits. At any time during the progress of a suit, application can be made by the parties to have these sums thus paid into the Accountant-General's hand, invested in the public funds. It is at their option to do this; and it is their own fault if they omit it. The parties who are entitled to the principal are also entitled to the dividends, and these continue to be carried to their credit, and added to the principal. This great bulk of money Parliament could not touch. There is another fund,—the floating balance of cash in the Accountant-General's hand,—called the Dead Fund, and so called only because it yields no interest. This balance remains in the hands of the Accountant-General, because no application is made to have it invested in the funds so as to yield interest. This fund has from time to time been dealt with by Parliament; for instance, Parliament has, by act, occasionally ordered a part of it to be applied in a particular manner. Your Lordships will perceive that the cash balance is precisely of the same nature as a banker's balance. The Court of Chancery is to a certain degree a banker. The Court always has sufficient money to pay the suitors the uttermost farthing on demand; but as no banker is expected to keep the whole of his balance in his shop every day and every hour, for the chance of his customers calling for it, so neither is the Court of Chancery bound to keep the whole of the fund in question in its hands on the chance of being called upon to pay it. The banker always finds funds for the payment of every draft presented to him, and the Court of Chancery

finds funds to satisfy every demand which may be made upon it. Parliament has in several instances directed a portion of this unappropriated fund to be invested in the public securities, so as to bear interest, which interest has from time to time been applied to various purposes, and sometimes to the payment of salaries. To this interest no individual has any claim. There may, by possibility—by a bare possibility—arise a claim to the principal; for this fund is composed of small sums which once belonged to persons who have ceased to exist.

If, however, all the parties—all the dead suitors—were to rise up and prefer their claims to every half farthing of those sums of money, they could be paid out of the principal; but their claims must be confined to the principal, to the interest they could have no claim, because, to them the money would not bear interest, it being their own fault, and their own fault alone, that it was not laid out for that purpose in the public funds. Now that interest has been sometimes found greater than the demands made on it; and the surplus forms a fund called the "Interest Fund," to the principal of which no party at present existing, or who could come into existence, can have any claim. The interest, then, accruing to form a fund, is from time to time itself invested. And if no person could come into existence who could establish a claim to the principal of the fund, because it was itself interest, so none could have any claim to the interest of that principal, which is interest upon interest. This fund now amounts to 600,000*l.*, which leaves 20,000*l.* a year unappropriated, over and above that which has been employed by former dispositions of the legislature: it is partly interest upon interest, and partly interest upon interest upon interest; and is therefore of necessity entirely at the disposal of Parliament. My Lords, the Dead Fund, with the interest which has accumulated on it, amounts to about one million, which may entirely be treated as principal; for it may—by the most remote chance, to be sure, that a man's imagination can conceive—be possible that the whole or the greater part of the fund may be claimed; but it is only the interest—to which there cannot by any possibility be any claim on the part of the suitor—which is taken by Parliament. The floating balance amounts at present to about 500,000*l.* I need not detain the House longer upon this point. It is only necessary to state this much, in order to sweep

any, I hope for ever, the charge that Parliament has done any thing which it had not a right to do with the Suitor's Fund.

Being now, my Lords, on the subject of Law Reforms, perhaps your Lordships will allow me to state the results which have occurred during the last six or seven months, from the very great improvements which you have adopted in the law of this country in relation to the administration of bankrupt's effects. The measure to which I allude, has established a balance in the way of saving, after the payment of all the salaries of all the officers, including ten Commissioners (four of whom are Judges of the Court of Review), registrars, and clerks, 36,000*l.* a year. Instead of 26,000*l.* a year, the cost of seventy Commissioners, under the old system, at 380*l.* each, the total charge under the present is 17,000*l.*, thus making a yearly saving of 9,600*l.* The office of Secretary of Bankrupts, which was attended with an expence of 5000*l.* or 6000*l.* a year, now costs only 2,800*l.*, effecting an annual saving of more than 2,500*l.* In the list of messengers' charges, there is a saving of 6000*l.* yearly. From these savings must be deducted the payment of the Registrar and Accountant-General; after which there remains a clear yearly saving of 500*l.* to be added to that of 9,000*l.*, effected by the constitution of the new Court as regards the Judges. The further savings effected in the payment of the Lord Chancellor's Secretary alone, with various other deductions in bargains, re-assignments, and sales, amounts to 10,000*l.*, which, with the sums I have above mentioned, make a total saving of 43,000*l.* a year; from which, however, must be deducted some 6000*l.* or 7000*l.* a year, payable as compensation—permanent compensation—for the changes which have taken place. Thus the permanent saving effected by the new arrangement is reduced to 36,000*l.* a year, as I stated before. The present saving is not so great, in consequence of various compensations, not permanent, which amount to 12,000*l.* a-year, so that the actual saving at present effected is only 24,000*l.*

The saving of expences, however, is the least part of the benefit which has resulted from the change in question. The system has worked excellently in other respects. In one particular, and in one particular only, have I been disappointed; and, I may add, agreeably so. Your Lordships may recollect, that I always contended, that a smaller number of Commissioners than ten, ap-

pointed by the new Act, would be sufficient to perform the business which had heretofore been done by seventy. As far as experience has hitherto gone, I think I am entitled to say that I was right in my opinion; and though, by struggling with my learned coadjutors, who assisted me in preparing the Bill, I was enabled to get the number of Commissioners and Judges reduced from fourteen to ten, I feel confident that we should not have furnished too little judicial assistance to the administration of affairs in Bankruptcy, if we had carried the reduction still further. This remark does not apply to the Commissioners, who, ordinarily, and with so much advantage, work the commissions; but to the Court of Review, which, in my opinion, is considerably underworked; and I look forward with great satisfaction to the prospect of being enabled, at an early period of the next session of Parliament, to throw on the learned and excellent persons who constitute that Court, and who are so able to bear it, a very considerable, and I hope, a very useful addition to their judicial labors, by connecting their jurisdiction with that of the Insolvent Debtors' Court. By that arrangement, the duty imposed on these learned persons will not be too onerous, whilst the country will gain incalculably by having a greater number of circuits performed by the Insolvent Debtors' Court in all parts of the country, than from the small number of Judges in that Court, there being only six or four of them, they are enabled to make, and will secure the inestimable advantage of constant access to that Court.

I will take the liberty of stating one or two facts, to illustrate the working of the new system, which are so interesting in themselves, that I am sure I need not apologise to your Lordships for mentioning them. In two months in 1831, the number of dividend meetings was 149 (this was the average number); yet in the two months preceding the period when they came into operation, namely November and December, 1831, on the prospect of a better mode of doing business, there were no less than 631 meetings of this description; four or five times as many as in the other case;—all "setting their houses in order,"—all wishing to have their matters carried through, that they might not be found wanting, when they came to be looked after by the investigating power of the new tribunal, then established and about to commence its operations. My Lords, in respect to one portion of the new system—the value of which, though much doubted, has

been productive of the most beneficial effects (I mean the appointment of official assignees)—I beg leave to state to your Lordships one or two illustrative facts. From the report of one commissioner only, it appears that he having looked into all the arrear accounts of an old assignee, found that there was a considerable sum due; and did, with the assistance of the official assignee connected with him, actually get in funds, of which no account had been rendered, amounting to no less than 51,355*l*. Thus, in one single department of the new system,—one individual commissioner, with the official assignee attached to him, obtained possession of upwards of 50,000*l*., which had been lying in the hands of different parties until the affair was thus scrutinized. Were I to state to your Lordships the facts which I am possessed of, they would strike you as they have done me, as supplying most satisfactory proofs of the good working of this system. I will trouble you with a few of these facts; and in order that there may be no mistake, I will mention the names of the parties concerned.

In the bankruptcy of James Rose, a decree of the Court of Chancery, in 1823, directed the sum of 5,213*l*. to be paid to the assignees, who never applied for it. The matter slept, and was totally forgotten, until the official assignee discovered some trace of the transaction in the old assignees' books, and recovered the money, after the lapse of nearly ten years. In the case of another bankrupt, one Wilkinson, an accountant, (and I mention this the more particularly, as accounts bore so large a share in the administration of bankrupts' effects under the old system,) assets to the amount of 7000*l*., belonging to different estates, were allowed to remain in his hands, where they were found at the time of his bankruptcy. This item also appeared in his balance-sheet: "Profits, including professional earnings, as accountant, and balance remaining, after declaring final dividends, 38,000*l*." I will detain your Lordships only by stating one or two other facts: A commission was issued against Hurst and Robinson, in 1826. The official assignee, when appointed, found 11,042*l*. 11*s*. 10*d*. lying dead in a banker's hands, and 2191*l*. in other hands, which he immediately recovered, and vested in Exchequer bills, for the benefit of the creditors.

In the case of a person who became a bankrupt in 1811, it was found that 1320*l*. had been received by the assignee, yet that no audit had taken place; the assignee was

dead, after having become insolvent, with that sum in his hands. A person named Applegarth became a bankrupt in 1826, and the solicitor absconded with his books; yet the official assignee has succeeded in fixing the old assignees with various sums, amounting to 5000*l*., which were totally overlooked upon several audits had before the old commissioners. In 1817, a man of the name of Hadley became a bankrupt, and his father proved a debt of 7000*l*., and got himself appointed assignee. No assets were produced, nor any dividend paid. The father had died; but the official assignee detected so many of his frauds, that his executors consented to abandon his proof of the debt, by which means his creditors obtained twenty shillings in the pound. This is a remarkable illustration of the benefits arising from the new system. There are several other cases of this character—some, equally strong and applicable; others, of course, somewhat less so; but all converging towards that point, which most strikingly illustrates the salutary tendency of the system of Official Assignees, and which most strikingly testifies the general satisfaction—I will not say universal, but general satisfaction—which its workings have already afforded the trading interest of the city of London. Nor is the source of this satisfaction confined to the mere saving of money; the beneficial operation of the system extends to the saving of time. For example, more progress was made in the matter of Duckett's bankruptcy, in four months, under the official assignees, than was made in eleven months in the case of Fry and Co., and twelve months in the case of Marsh and Co.; and before twelve months a final settlement would be effected in the case of Duckett, while four or five years have elapsed without a final settlement of the two others.

My Lords, I cannot conclude these observations without returning thanks to many gentlemen connected with the City of London, for the cordial, and I may say, the liberal minded support which they have given to my views, opposed as these are, in some respects, to long standing prejudices, and in others directly interfering with their interests. When I mention the fact, that three or four of the most respectable bankers in London have assisted, not only in the choosing of eligible persons to act as official assignees, but have actually assisted in carrying it into effect, at a personal sacrifice, in one instance of not less than 2000*l*. a year, (the profit on balances and sums, which otherwise would have been deposited in his

hands) your Lordships will admit that too much praise cannot be bestowed upon those gentlemen for their patriotism and liberality, and honorable disregard to mere self aggrandizement.

In stating this fact, I at once bear testimony to the candour and liberality, of those individuals, and also to the useful operation of the new system, in checking what was before a great abuse, in the management of bankrupts' estates; inasmuch as profits were given to bankers, which they ought not to have received. My Lords, I have thought it proper to take this opportunity of stating these facts; and in concluding, I beg to repeat, that I cannot sufficiently express my sense of the great zeal and ability with which the persons interested in the discharge of those duties have performed them: they are justly entitled to my commendations and the gratitude of the public.

PLEASANTRIES OF THE LAW.

No. V.

I SHALL now give a further specimen of the enticements offered to the law student in the law books.

A horse, whereon a man is riding, cannot be distrained for rent. But C. J. *Keling* was of opinion that such a horse may be distrained damage feasant, and that he shall be led to the pound with his rider upon him. 1 *Siderfin*, 440.

Clobor's wife complained against him in the Spiritual Court, *causa savitiæ*, for that he gave her a box on the ear, and spate in her face, and whirled her about, and called her *dams'd whore*. This was not by libel, but verbal accusation, reduced after to writing. The husband denied it; but the Court ordered him to give her four pounds every week, *pro expensis litis*, and alimony; whereupon he moved for a prohibition, suggesting that he chastised his wife for a reasonable cause, as by the law of the land he well might; after which she went from him; and that they were reconciled again, which took away the former *savitiæ* as reconciliation after elopement. *Richardson*, C. J. said, that they could not examine what was cruelty and what not. But without doubt the matter alleged is cruelty, for spitting in the face was punishable by the Star Chamber; but if Clobor had justified, and set forth a provocation by the wife to give her rea-

sonable castigation, that would be some colour for a prohibition. *Hetley*, 149, 150; and see *Agar's case*, 2 Brownl. 36; where it seems to have been held, that a husband has a right to beat his wife, and call her any name he pleases.

A man may justify the battery of another in defence of his wife, *for she is his chattel*; 2 Roll. 546; which is rather an ungallant reason:

If a man assault me, I am not bound to attend until he strikes, but I may lay on before in my own defence; for it may be I shall come too late afterwards. 2 H. 4, 8, *per Cur.*

The wearing of a sword, after one is bound to his good behaviour, no breach of good behaviour now, as perhaps it was heretofore, (see *Comp. Just. Peace*, 119, 126,) when swords were not usually worn but by soldiers; for then they struck as great a terror in people as a blunderbuss does now. But since at this day swords are usually worn by all sorts of people, this cannot now be construed a breach of the good behaviour; so that which heretofore was a crime is now by custom become none. *Hawle's Remarks*, &c. p. 81. So that it would seem, that as swords are now not ordinarily worn, except by soldiers, it would, at the present time, be considered a breach of the peace to wear a sword.

In one case a man may choose his father; it is this: If a man has a wife, and dies, and within a very short time after the wife marries again, and within nine months hath a child, so as it may be the child of the one or the other; some have said, that in this case the child may choose his father. *Quia in hoc casa filiatio non potest probari*; for avoiding of which question and other inconveniences, the law before the conquest was, *sit omnis vidua sine marito duodecim mensibus et si maritaverit, perdat dotem*. Co. Litt. 8. a.

A man may plead *not guilty*, yet tell no lye; for by the law no man is bound to accuse himself; so that when I say *not guilty*, the meaning is as if I should say, by way of paraphrase, I am not so guilty as to tell you; if you will bring me to a tryal and have me punished for what you lay to my charge, prove it against me. *Selden*.

A. says to B. "One of us is perjured." B. says to A., "It is not I." And A. says,

"I am sure it is not I." *B.* shall have an action for these words, for the subsequent words shew apparently that he intends him. *Coe v. Chambers*, 1 Roll. 75.

Justice *Twisden* said, he remembered a shoemaker brought an action against one, for saying he was a cobbler; and though a cobbler be a trade of itself, yet it was held the action lay in Chief Justice *Glyn's* time. *Mod. Rep.* fol. 19.

When an execution is lawfully begun, or hath a legal commencement. This diversity was taken and agreed for law in *Sir William Fish's case*. Sir William was looking out of his window, and the sheriff, *per fenestram*, delivered to him a *capias ad satisfac.* to take the said Fish and apprehend him; and Fish escaped from him, and the sheriff broke the door of his house, *maintenant*, and retook him; and adjudged lawful, because there was a lawful beginning of the execution before, which was presently pursued. *Palmer's Rep.* 58.

A sheriff cannot, upon private process, rush into a house, which by craft, as knocking at the door, &c. he procured to be opened unto him, and then the first entry was held unlawful; for the opening of the door was occasioned by craft, and then used to the violence intended. *Hob.* fol. 62.

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IMPORTANT RECENT TRIALS. No. VII.

Old Bailey, Friday, Jan. 4, 1833.

CASE OF WILLIAM JOHNSON AND SAMUEL FARE, FOR MURDER.

THE prisoners, William Johnson and Samuel Fare, were placed at the bar, and arraigned on two indictments, the first charging Johnson with the murder of Benjamin Couch Danby, and Fare as being an accessory; and the other charging both the prisoners with assaulting Danby on the king's highway, and robbing him of 11s., his property. The prisoners pleaded "not guilty" to both indictments.

At ten o'clock Mr. Justice GASELER and Mr. Justice J. PARKE came into the Court, when the prisoners were again placed at the bar, and the jury charged with them upon the indictment for the wilful murder.

William Johnson was described in the calendar as a gardener, and aged 29; and Samuel Fare, alias Sleath, labourer, aged 22.

Mr. ADOLPHUS (with whom was Mr. CLARKSON) stated the case for the prosecution at considerable length.

Mr. PHILLIPS appeared to defend Fare, and Mr. BODKIN to defend Johnson.

Peter Addington stated that he was a baker at Enfield. Benjamin Couch Danby was first cousin to witness's wife. On the 12th of December Danby came to lodge in witness's house, having been recently from India. He resided with witness until the 19th, accompanying witness, nearly daily, in his cart, when going his rounds with bread. On the morning of the 19th, witness lent him a gun to shoot birds with, and also lent him the bowl of a tobacco-pipe, to charge the gun with. He returned to dinner at one o'clock, and afterwards went with witness in his cart; they returned about five o'clock. There was a public house in the neighbourhood, called the Crown and Horse-shoes. He left witness's house at twenty minutes before six o'clock, to go out. He had not returned to witness the tobacco-pipe bowl. Witness never afterwards saw him alive. The following morning, at half-past six o'clock, in consequence of what he had heard, he went to the Sergeant public house, in Parsonage Lane, and there saw the dead body of the deceased.

Joseph Perry, landlord of the Crown and Horse-shoes, Enfield-chase side, deposed, that within three yards of his door, there was a bridge across the New River. On the evening of the 19th of December, the deceased and the prisoners were at his house. He first saw Danby, Johnson, Fare, Cooper (the approver), Taylor, Wagstaffe, and Jackson, in his tap-room, at eight o'clock. Fare was lying along a bench, apparently asleep, and Johnson was lying across two chairs. A young man named Wager was also lying on a bench. Witness laid hold of Fare, and said he would have no sleeping there. He roused them all. Fare appeared angry at him, and said, "— your eyes, you would not serve me so, but you think I can't pay for a pot; but I can pay for a gallon;" and he produced 2s. 6d. Fare was then a pauper on the parish, and out of employ. The deceased, Wagstaffe, Taylor, and another, were at that time playing at dominoes, for a pot of beer. At ten o'clock witness had the dominoes taken away. Afterwards witness saw the deceased and Fare tossing for beer. Witness retired up stairs at a quarter to eleven, having previously given orders not to draw the parties any more liquor. A half pint of gin was, however, served to them, after which they went away together. During the evening the deceased pulled out his purse several times. It was a silk net purse, with steel sides and tassels, and there appeared to be from 12s. to 15s. in silver in it.

Cross-examined by Mr. BODKIN.—Had seen the purse before. Never saw Johnson in his company before that evening. Cooper did not come in till about ten at night. The deceased shewed a great number of pockets in his clothes. When he shewed them, some one said, "What a number of pockets you have;" but it was not Cooper.

Joseph Matthews.—Was pot-boy to the last

witness. He first saw Johnson in the tap-room with the deceased, about seven o'clock in the evening of the 19th of December. Charles Jackson came in next. They had some drink. Jackson asked if any one would play at dominoes, and the deceased said he would. Witness brought the dominoes, and Jackson asked witness to play. He consented. The deceased asked Johnson to play. Johnson said he had no money, and could not play. The deceased said, "Never mind that; if you lose, I will pay for you." The deceased gave Johnson some halfpence. They all four played for about twenty minutes, when witness's master called him away. Before he went out, Richard Wagstaffe came in, and took witness's place at the dominoes. In a quarter of an hour, witness returned, and found them playing; that was before eight o'clock. At nine o'clock witness again went in, and they had finished playing. William Taylor was then there, and they renewed the game, after having had some beer, Taylor taking Johnson's place. A little before ten o'clock witness took away the dominoes. John Wager was then in the tap-room, as was Fare. Cooper was there, but witness could not tell what time he came in. Cooper had an old lamp when he came in. They staid about half-an-hour after witness's master went to bed. Before they went, the deceased said they would have half a pint of gin, and it was given them. The deceased pulled out his purse several times during the evening. It was about ten minutes past eleven when they went away. Wagstaffe, Cooper, Johnson, Fare, and the deceased went away together. When the deceased went out he staggered about, and Mrs. Perry gave witness orders to see him past the river. Witness led him over the bridge, and then asked Fare "to be so good as to see the young gentleman home." Fare said he would. Fare took hold of his left arm, and Cooper of his right. Johnson and Wagstaffe were behind. Witness then left them.

Cross-examined by Mr. BODKIN.—The deceased was the last of the party who went out of the door. Wagstaffe's house was about 100 yards from the public house, on the road the deceased had to go.

Richard Wagstaffe stated that he was a baker at Enfield-chase-side. On the night of the 19th of December he was at the Crown and Horse-shoes, playing at dominoes with the prisoners and deceased. They left at a little after eleven o'clock. Witness went out first, and the rest followed. When the deceased was in the house he appeared sober, but when he went out he staggered, and the pot-boy called out "Jack and Sam, (meaning Cooper and Fare,) for God's sake see him safe home, for he is so drunk he had like to be in the river." When witness got over the bridge, he saw Johnson and Fare apparently leading the deceased homewards, and Cooper was standing at the corner of the bridge. Cooper then went with them. Witness walked with them as far as his own house. His house was on the way to Mr. Addington's. Johnson and Cooper then were by the side of the deceased, and Fare about six yards in advance. Witness went in, and saw no more of them that

night. Witness advised Cooper to have nothing to do with the others, as they would probably rob the deceased. Cooper said he would go with the deceased.

Cross-examined by Mr. BODKIN.—Witness had been tried in that Court two years ago.

By Mr. ADOLPHUS.—Was then acquitted.

John Cooper was then called, and, on being sworn, deposed as follows:—I am eighteen years of age. In December I worked at a brewery at Enfield. On Wednesday evening, the 19th of December, I went to the Crown and Horse-shoes at ten minutes past ten o'clock. I found in the tap-room Charles Jackson, Richard Wagstaffe, the deceased, and the two prisoners. They were sitting at a table, drinking. I stayed there till a quarter past eleven, when the landlady ordered us all out, as it was time to shut the house up. I did not observe how the deceased walked when he got out. Johnson and Fare helped him over the bridge, and Matthews came out and asked some one to lead him home. I know Wagstaffe's house, about 100 yards from the public house. Johnson, Fare, and the deceased, walked first. Wagstaffe and I followed. I had a candlestick like a lamp, but no light in it. I walked four or five yards behind Johnson, Fare, and deceased. When we came as far as Wagstaffe's house, he (Wagstaffe) went in. He previously said to me, "Jack, you had better go home." I said to him, "I shall not go." Danby was not sober. Sheffield's house was about twenty yards from Wagstaffe's house. We went on a little way, and near Sheffield's house they were shoving one another about, and Fare fell down. Johnson, Fare, and the deceased were shoving one another about. I was then about four yards from them, and could not distinguish whether any thing was taken from the deceased. Fare got up and went away somewhere. I did not observe where he went to. The deceased was then with Johnson. The deceased then got hold of my arm, and asked me to lead him home. Johnson had hold of the other side of him. We three went on together. Mr. Addington's house was not 200 yards further, but on the other side of the way. I had never seen the deceased before that night, and did not know then that the deceased lived at Mr. Addington's. When we got opposite to Mr. Addington's, Johnson asked deceased to go and get a pint of beer. The deceased said, "With all my heart." Holt White's Lane leads into the Chase-side Road. We passed Addington's house, along Chase-side Road, leading to Holt White's Lane. When we got to the bottom of Holt White's Lane two persons passed us. I bade the gentlemen good night, and they bade me good night. They went on the Chase-side Road on the opposite direction to that which we were going, and towards the Hollybush. We turned up Holt White's Lane. There are four roads where Holt White's Lane ends in the Chase-side Road, and opposite to Holt White's Lane is Parsonage Lane. Pinnock's beer-shop is up Holt White's Lane. We then went up the lane, within nine or ten poles of Pinnock's beer shop, when Johnson turned

round. Johnson was then on the deceased's right, and I was on his left, next the ditch. I was not aware that he was going to turn round. When Johnson turned round, the deceased said "Where are we going?" and I said "We are going home." We did not have any beer, and we came down the road back again, about nine or ten poles. I was near the ditch on one side of the deceased, and Johnson on the other. Johnson then said to me, "I will be — if Sam has not robbed him: I will be — if he is not robbed." About half a minute after, while going down the road, Johnson put his foot out, and threw the deceased down, and threw him on me, and I fell in the ditch. The deceased's head and shoulders fell upon my head. Johnson fell too. I did not remain under the deceased half a minute. My cap was on when I fell; and when I drew my head from under the man, my cap was left behind. I felt for the cap, and found it under the side of deceased's face. I observed that it was then wet with blood. On observing that, I said to Johnson, "What have you been doing? Don't hurt him—don't kill him." When I was down under the deceased, Johnson was uppermost. While I was down I could not see what Johnson was doing. My first observation was when I found my cap wet. When I spoke to Johnson he replied, "I have done him." When I got out of the ditch, I saw Johnson with his knees on the deceased's breast, and his hands on deceased's head. When I got in the middle of the road, Johnson got off the man, and came to me. The deceased did not struggle, but I heard him make a moaning noise once—a groaning. When Johnson came to me from the deceased, he said, "You take this knife, and go and finish him, for I began him." I said, "No, I won't." He had an open knife in his hand; Johnson then went up to the deceased, who was then holding his head up and saying, "Oh, do not hurt me! oh, do not!" Johnson said, "What will you give?" and the deceased replied, "Anything." I could see his face all over blood. Johnson then stooped down and cut his throat. I heard a gurgling in deceased's throat. Johnson stayed by him about half a minute, and took a handkerchief out of the deceased's jacket. When Johnson asked me to go and finish him, and I refused, he shook his fist at me, and said, "Do not you say any thing—do not tell any body." The deceased's head and shoulders only were in the ditch, and his legs were in the road. I did not interfere because I was afraid of my own life. Afterwards Johnson and I went down Holt White's Lane together. Johnson kept saying, "Do not say anything to any body—do not know anything about it—do not say a word." When we got into the Chase-side Road I wished to go home along the road; but at Johnson's request I went with him across the Cornish Fields, which would lead us the back way to Perry's house. Before we could get to Perry's house, we had to cross the New River by another bridge. When we got over that bridge, Johnson stooped down, and washed his hands and the knife, in the river. We

then went over the bridge, near Perry's house, which we had crossed with the deceased; we then went in a direction to Giles's house, along the river side, where Johnson took out the handkerchief which he had taken from the deceased, and threw it in the river. The stream runs in a direction towards Giles's house. I went on only about twenty yards further, when I parted with Johnson and went home. Johnson also went across the bridge, homewards. The next morning at ten o'clock I was taken into custody, as I was going with my master's dray. Mead and Watkins took me. When I was taken, my cap was examined, and I was questioned about it. I told them I had been carrying some meat for my master. In about an hour after I made a full statement, such as I have made now.

Cross-examined by Mr. BODKIN.—I never saw the deceased before that night. During the time I was there, he took out his purse once. It was a brown purse, with slides, and appeared as if it had money in it. He did not unbutton his coat and show that he had a good many pockets, while I was there. They had just done playing at dominoes when I went there. The first I had to do with deceased in taking his arm, was after we passed Wagstaffe's. The pot-boy, when we came out, did not put the deceased under my care. Did not hear him say, "For God's sake, Jack and Sam, take care of him, for he has nearly fallen into the river." He requested Sam to take care of him, and he left him in charge of Fare and Johnson. Wagstaffe told me I had better go home, for it would be better for me; he did not say he thought the man was going to be robbed, nor any thing of that kind. The pushing about on the road did not excite any suspicion in my mind. When I went with them past Addington's my object was to get some more beer. I knew the beer-houses were by that time shut up, but I thought we might call them up. It was a star-light night; there was no lamp near, but by the light I could see that my cap was bloody. The next morning I went out at five o'clock to my business. I was dreadfully shocked at what I had seen the night before, and I had no rest. When I saw my master in the morning, I said nothing to him, or any one else, until ten o'clock, and then I was taken. I had my bloody cap on that morning. I was asked by the officers how the blood came there; and I said I had been carrying dog's meat for my master, and that the blood came off it on my cap. The deceased was very much in liquor, and any one person might have easily overcome him.

Mr. BODKIN.—Now, I ask you on your oath, after you got round the corner of the Chase-side Road into the lane, after passing the two strangers, did not Johnson separate from you, and go home?

Witness.—No, he did not.

The witnesses for the prisoner Johnson were here ordered out of court till they were wanted.

Cooper stated that Johnson lodged with his father, near Mr. Giles's house. Johnson was dressed in a black coat and trousers.

Edward Browning, a timber-merchant, stated that he was at Enfield on the 19th of December. About a quarter before twelve on that night he was passing the end of a road, leading to Holt White's Lane, when he saw two or three men standing together up the lane, and two more further on towards the Hollybush. He did not speak to them, nor they to him.

John Horatio Winn, a shopkeeper on Enfield chase side, stated that on the evening of the 19th of December he was passing along the road. It was between eleven and half past. At the bottom of Holt White's Lane he saw two men standing across the road. Did not say any thing to them, nor they to him.

By Mr. Justice J. PARKE.—Was going towards the Hollybush. There was a young man with him. Neither of the two men said "Good night."

William Wheeler stated that he was a labourer at Enfield. On Thursday the 20th of December, at half-past five o'clock, he was going to his work down Holt White's Lane, and when he got about halfway down, on the left-hand side of the road, he saw the deceased's body in the ditch. It was lying on the face. The face was in the ditch, and the feet in the road. He kicked it, thinking it was a man in liquor, and called to him several times, but got no answer; and then laying hold of it, found there was no life in it. He then turned back, to go home, and meeting James Ashby with a load of straw, they came back to the body together. He then went to Radley, the watchman, in Parsonage Lane, and got a light. He went with it to the body, and found on it a few halfpence and a small knife; a pair of gloves were in the ditch. Some shot he also found scattered about. A board was got, and the body placed on it. There were several wounds on the face. They took it to the Sergeant public house in Parsonage Lane. Witness also observed a wound in the throat. The left-hand pocket of the deceased's trousers was turned inside out. [*John Mead*, the constable, here produced the gloves, which the witness identified as being those he found, as described.] Where the body was found, there was the appearance of a struggle, and much blood was on the ground.

— *Cutley*, landlord of the Sergeant public house, deposed to receiving the body of the deceased in his house, at twenty minutes after six o'clock in the morning of the 20th of December. The witness accompanied the last witness to the spot where the body was found, and picked up a cap and two halfpence. When the body was taken to witness's house, he sent for Mr. Asbury, a surgeon, and for the beadle. Witness went to show them the spot, and about seventy yards this side of it, he found a silk handkerchief, which he gave to Mr. Addington, who gave it to Mead.

John Mead, beadle of Enfield, deposed to apprehending the prisoners. On Fare he found four knives and some shot. Cooper denied all knowledge of the murder, and said the stains in his cap were occasioned by carrying some fresh horse flesh. About an hour afterwards Cooper

wished to tell all about it. That was at the George Inn, but witness refused to hear it. The neckerchief of the deceased was bloody, and appeared to be stabbed through with a knife in several places.

Richard Watkins, a Bow-street patrol, stationed at Enfield, assisted the last witness to apprehend Johnson, who denied all knowledge of the murder. The witness produced a pair of trousers and a glove, belonging to Johnson, on which were marks of blood. On the Wednesday following he received a piece of cloth from Mr. Penny, which appeared to belong to Johnson's trousers; it was stained with blood.

Mr. Penny produced the piece of cloth, which he had received from the next witness.

Richard Budd, a gardener, who found it on the spot where the murder was committed. It was bloody. There was blood upon the ground, which was much disturbed, as if from persons struggling.

Thomas Boswell, a tailor, matched the piece of cloth to a rent at the bottom of Johnson's trousers; it corresponded, and witness had no doubt of its having been a part of them.

[The piece of cloth was examined by the jury, and closely inspected by the learned Judges. Mr. Justice J. PARKE intimated that he could not perceive the correspondence between the piece of cloth and the trousers.]

The Jury again examined it with the assistance of the witness, who fitted it to the trousers, and they were handed up for the inspection of the Court a second time.]

Mr. Addington was recalled. He identified the deceased's cap, which he wore the last time, he saw him alive. The piece of cloth did not belong to the deceased.

Cutley re-examined.—Saw the piece of cloth the day after the murder.

John Ebenezer Davis sworn.—Is a cloth-factor of considerable business, but had entered the Court casually. Had examined the trousers and the piece of cloth; they are both of the same texture, and they appear to have been worn together, and to have sustained the same degree of wear.

Cross-examined by Mr. BODKIN.—Has not been a manufacturer of cloth. It is black kerseymere.

By Mr. Justice PARKE.—I think they are of the same piece of cloth.

Boswell, recalled.—The sewing appears to have been done by the same tailor.

Cross-examined.—There is not one stitch whole at present in the fragment.

One of the jurors suggested, that if he were allowed to pull out a piece of thread or silk from each, he could tell if they were originally one.

The Court suggested that the examination of the witness had better be completed first.

Boswell, cross-examined.—I think the sewing was done by the same hand, but cannot exactly tell in trousers worn as they are. The trousers are not of the same length in the legs, because a piece is gone all round from one of them. The witness having compared the legs, said that there was not an eighteenth

part of an inch difference between them, including the fragment. The stitches in both were sewn with silk.

By Mr. CLARKSON.—I have no doubt that the piece of cloth belongs to the trousers.

John Matthews called.—Cooper wore corduroy trousers on the night of the murder.

By the Court.—Fare had on corded breeches, with a broad cord. Johnson wore black trousers and a black coat.

J. A. Asbury, examined by Mr. ADOLPHUS.—Is a surgeon. Was called to view the deceased on the 20th of December. There was a wound on the side of his head sufficient to cause death, which appeared to have been a stab with a sharp instrument, which, in passing, transfixed the carotid artery. That would produce almost instant death. I saw the trousers, the glove, and the piece of cloth, which were then marked with blood.

By Mr. BODKIN.—I cannot say whether it was human blood or not; I can only judge by the eye.

Robinson, a farmer at Enfield.—I found a handkerchief in the river the day after the murder: I afterwards gave it to Mr. Addington. It appeared to have drifted with the stream from Mr. Perry's house.

Cross-examined.—I found the handkerchief about two minutes' walk from Cooper's house. It was caught in a bush.

Thomas Holder, examined by Mr. ADOLPHUS.—Is a clerk to a barrister. I packed up some things for the deceased on the 12th of December. Among them was the handkerchief produced by the last witness. I have used the handkerchief myself. There is a stain upon it in the centre.

Hannah Hawthorne, examined by Mr. ADOLPHUS.—I used to wash for the deceased. This handkerchief belonged to him.

Mr. ADOLPHUS intimated that the case was complete.

Cooper recalled, and examined by Mr. Justice PARKE.—I did not see anybody before I got home, on the night of the murder, except a man and woman at a distance, going up Chase-side.

By the Jury.—How long was it before the murder was committed that Fare left?—Twenty minutes.

Mr. *Browning* recalled.—Was walking with a lady that night, and saw three men together.

Mr. Justice GASELEE observed to the Jury, that Mr. PHILLIPS, Fare's counsel, had submitted, that there was no evidence against Fare, with which the Court concurred.

Fare was then discharged.

The prisoner Johnson put in a written defence, which opened by soliciting the Jury to dismiss from their minds any prejudice which might have been created against him, and then proceeded to relate the particulars of a stag-hunt, which took place at Enfield on the 19th of December, at which he was present, and in company with several others followed the stag until it was run down, when he assisted in cutting it open. He had no knife of his own, but

borrowed one of another person, which he returned when he had finished dressing the stag. The blood of the animal spirted over his trousers, and he received two shillings and part of the pluck for his trouble, which he put into his pocket. In going up a lane afterwards, he met Holt, and showed him the pluck; as he pulled it out of his pocket, a piece of cloth which he had in his pocket came out with it. It was torn from his trousers some time before. The defence then referred to the fact of his being in company with the deceased, Wagstaffe, Cooper, and others, at the Crown and Horse-shoes public-house, but denied that he ever heard the deceased talk of being possessed of money, or that he ever saw him exhibit any; nor did he go home with the deceased, but Cooper did. He declared both his ignorance and innocence of the murder, and observed, that, having work and money at command, and never having fallen out with the deceased, he could have no motive for taking his life. The paper concluded by complaining, that he had been held up to his country as a desperate murderer, and the prejudice that had been created against him would prevent many gentlemen who knew him from coming to speak to his character.

Mr. BODKIN called the following witnesses on behalf of the prisoner:—

Thomas Moles, a labourer of Enfield: I remember a stag hunt at Enfield on the 19th of December last. The prisoner and several other persons I know were there. The stag was killed in Mr. Walker's field, Enfield-chase. The prisoner had my knife, and helped to take out the entrails of the stag. I cannot say I saw blood upon his clothes, but he was near enough to get bloody. He returned my knife about three quarters of an hour afterwards. The stag was killed about noon. The murder was committed the same night. I, as well as Johnson, followed the stag, which jumped over hedges and ditches.

By Mr. ADOLPHUS.—How soon after the stag was dead was it cut open?—Directly.

Thomas Higgleton, a labourer, residing at Enfield, corroborated the statement of the last witness Aldridge; Hare stuck the stag, and Johnson helped to cut it open. The blood might certainly have got on his clothes.

Joseph Short, a labourer at Enfield, deposed to the same effect.

Moles recalled and examined by the Court.—Johnson was dressed in a black coat and trousers on the day of the stag hunt. He was not on horseback.

James Ames, a farmer, gave the prisoner a good character.

Mr. Justice GASELEE summed up at very great length, and with much minuteness. When his lordship was recapitulating the evidence of Watkins, which described that the prisoner, on being taken into custody, said he did not know where he was—

The prisoner interrupted, and said, he told Watkins that he was at the Horse-shoes.

Watkins was recalled, and deposed to the same effect as before, which the prisoner denied.

The Jury retired at about half-past six o'clock, and at twenty minutes to eight re-entered the Court, and returned a verdict of *Guilty* against the prisoner.

On being asked what he had to say, he ejaculated something like a prayer, in a very low tone.

The usual proclamation for silence having been made,

The RECORDER proceeded to pass sentence of death upon the prisoner, addressing him to the following effect:—Prisoner at the bar, you have been tried by an extremely attentive and intelligent jury; and I may say of that jury, what I have had occasion to think of all the juries in this Court, that they seemed deeply impressed with humane feelings towards those they have had in charge, and I believe no person who has heard the evidence can entertain any doubt that they have come to a fair and true conclusion upon it. You stand convicted of the wilful and deliberate murder of an unoffending man, than which no crime can be more atrocious; and I hardly know how to draw your attention to the aggravated nature of your offence. The person who fell a victim to your murderous design had been your associate;—he had been kind to you, and had offered to treat you;—he had done every thing to induce you to be kind to him; but you sought his life, and shamefully murdered him. I do hope your conscience has smitten you from the moment you committed that act, and that you will now do all you can, by the sincerest penitence and fervent prayer to Almighty God, to seek forgiveness, that the blood you have shed may not rise up in judgment against you. The Almighty Creator of us all, in the earliest ages declared, that “whosoever sheddeth man’s blood, by man shall his blood be shed.” You are differently situated from your victim, whom you sent in a state of inebriety, unprepared, to appear before his God. You have time to repent. The learned Judge exhorted the criminal to make the best use of his time in preparing for another world, and concluded by passing sentence of death in the usual form; ordering him for execution on Monday morning next; his body to be interred within the precincts of the prison.

BANKRUPTCIES SUPERSEDED.

From Dec. 25, 1832, to Jan. 18, 1833, both inclusive.

Ditchfield, James, Warrington, Lancaster, Victualler, rescinded and annulled.
Huxtable, James, Bristol, Corn & Provision Factor.
Keiffenstein, John C., Langport Place, Camberwell, rescinded and annulled.

BANKRUPTS.

From Dec. 25, 1832, to Jan. 18, 1833, both inclusive.

Armstrong, William, Newcastle-upon-Tyne, Timber Merchant. *Meggison & Co.*, King’s Road, Bedford Row; *Brockett & Co.*, Newcastle-upon-Tyne.
Athow, Christopher Thomas, Wood Street, Cheapside, Wholesale Haberdasher. *Green*, Off. Ass.; *James*, Bucklersbury.
Ashton, William, Birmingham, Grocer. *Clarke, Richards, and Co.*, Lincoln’s Inn Fields; *Bond*, Birmingham.
Brown, Francis, Watford, Hertfordshire, Grocer & Cheesemonger. *Osbaldiston & Murray*, London Street, Fenchurch Street.
Butler, William, Bilston, Stafford, Miller & Corn Dealer.

Norton & Chaplin, Gray’s Inn; *Shackell & Co.*, Birmingham.
Bray, Charles, Theobald’s Road, Coachmaker. *Lyle*, Mecklenburgh Square; *Graham*, Off. Ass.
Blyth, Daniel Outhwaite, Colchester, Essex, Merchant. *Tennant*, Off. Ass.; *Marston & Co.*, Church Row, Newington Butts.
Bulmer, George, York, Dealer. *Bell & Co.*, Bow Church Yard.
Burton, Edward, Manchester, Wine & Spirit Dealer. *Milne and Co.*, Temple; *Crossley & Sudlow*, Manchester.
Beaumont, Joseph, and Thomas Holt, Cornhill, Tailors & Clothiers. *Messrs. Gole*, Lothbury; *Campan*, Off. Ass.
Berkley, John, Newcastle-upon-Tyne, Merchant. *Meggison & Co.*, King’s Road, Gray’s Inn; *Brockett & Co.*, Newcastle-upon-Tyne.
Crundall, James, Brixton Road, Surrey, Builder. *Gibson*, Off. Ass.; *Watson & Sons*, Bouverie Street, Fleet Street.
Chapple, Wm. and Wm. Snow, Oxford Street, Tailors. *Abbott*, Off. Ass.; *Cleobury*, Montague Street, Russell Square.
Clark, Richard, Norbury, Derby, Miller. *White & Whitmore*, Lincoln’s Inn.
Dalcken, Theodore Augustus, Edward Street, Portman Square, Merchant. *Gibson*, Off. Ass.; *Watkins*, Lincoln’s Inn.
Evans, Henry, Narbeth, Pembroke, Corn and Butter Merchant. *White & Whitmore*, Lincoln’s Inn; *Bevan & Brittan*, Bristol.
Evans, Geo., Nicholas Lane, Lombard Street, Ship & Insurance Broker. *Messrs. Gole*, Lothbury.
Fensham, John, Portman Street, Portman Square, Carver & Gilder. *Goring & Nation*, Orchard Street, Portman Square; *Lackington*, Off. Ass.
Freethy, Thomas, Acton, Middlesex, Carpenter. *Groom*, Off. Ass.; *Ashfield*, Redman’s Row, Mile End Road.
Frith, Thomas, High Holborn, Ironmonger. *Coombe & Co.*, Tokenhouse Yard.
Farrow, David, Farringdon Street, & High Holborn, Gunsmith & Clothes Salesman. *M^d Duff*, Off. Ass.
Graves, Geo., Skinburness, Cumberland, Innkeeper & Varnish Maker. *Tyson*, Maryport; *Adlington & Co.*, Bedford Row.
Grist, Peter, Albany Street, Regent’s Park, Printer & Music Seller. *Verbeke & Corrie*, Lower Grosvenor Street.
Gingell, Wm. James, Langford, Somerset, Baker. *Williams*, Verulam Buildings, Gray’s Inn; *Wall*, Devizes.
Gankrodger, Tho., Huddersfield, York, Merchant. *Battye & Co.*, Chancery Lane; *Cloughs & Norton*, Huddersfield.
Greene, John, Amptill, Bedford, Scrivener. *Wade*, Baldock; *Hawkins & Co.*, New Boswell Court.
Hunt, Geo. Fred., Prince’s Place, Westminster Road, and High Street, Wapping, Oil & Colourman. *Pasmore & Taylor*, Basinghall Street; *Graham*, Off. Ass.
Hardwick, John, White-hart Yard, Tottenham Court Road, Horse Dealer. *Edwards*, Off. Ass.; *Seward*, Farnival’s Inn.
Howard, Charles, Mile End Road, Victualler. *Belcher*, Off. Ass.; *Lockett*, Wilson Street, Finsbury Square.
Harrison, Wm., Portsmouth, Printer, Bookseller, &c. *Lowe*, Off. Ass.; *Smith, Weir, & Smith*, Basinghall Street.
Hancock, Charles, Hillingdon, near Uxbridge, Middlesex, Brickmaker. *Kitchener*, Off. Ass.; *Cattine*, Ely Place.
Hardcastle, Tho., Bolton le Moors, Lancaster, Chemist & Druggist. *Milne, Parry & Co.*, Temple; *Kaowles*, Bolton le Moors.
Huddleston, Abraham, Bilton-with-Harrogate, York, Hotel Keeper. *Strangways & Walker*, Barnard’s Inn; *Gill*, Knaresborough.
Heycock, Wm., Henry, and Edwin, Beeston Royds, Leeds, Cloth Manufacturers, Merchants, &c. *Wiglesworth & Ridsdale*, Gray’s Inn; *Gawnt*, Leeds.
Hall, James, Liverpool, Wine Merchant. *Rogerson*, Liverpool; *Adlington and Co.*, Bedford Row.
Irvine, James, London, Merchant. *Freeman & Co.*, Coleman Street; *Lackington*, Off. Ass.
Jackson, Jos., Bedford Row, Tailor. *Lowe*, Off. Ass.; *Smith*, King’s Arms Yard.
Jackson, Martin, Sheffield, Grocer & Miller. *Rodgers*, Devonshire Square, Bishopsgate Street; *Ryalls*, Sheffield.
Jones, Wm. Calvert, Swansea, Glamorgan, Grocer. *White & Whitmore*, Lincoln’s Inn; *Short*, Bristol.
Leahy, Wm., Grove, Great Guilford Street, Southwark, Millwright, Engineer, &c. *Green*, Off. Ass.; *Fawcett*, Loader, Tho. Barnett, Hart Street, Bloomsbury, Map Publisher. *Kitchener*, Off. Ass.; *Mark*, Southampton Buildings, Chancery Lane.
Ladd, Wm. Henry, Liverpool Street, London, Merchant. *Abbott*, Off. Ass.; *Shackell*, King’s Arms Yard.
Levy, Sam., Exeter, Silversmith. *Turner*, Exeter; *Turner*, Milman Street, Bedford Row.
Landells, James, Gateshead, Durham, Widow, and Wm. Graham Landells, Newcastle-upon-Tyne, Wholesale Haberdashers. *Owen & Dixon*, Mincing Lane; *Dale*, North Shields.
Lowe, Wm., Bishopsgate Street Without, Chemist & Druggist. *Green*, Off. Ass.; *Lester*, Child’s Place, Temple Bar.
Maddocks, Peter, Liverpool, Timber Merchant. *Vicent*,

King's Bench Walk, Temple; Robinson, or Bartley & Co., Liverpool.

Macfarren, Geo., London Street, Fitzroy Square, Bookseller. Groom, Off. Ass.; Rosser, Great Ormond Street.

Myers, Myer, Birmingham, Factor & Pawbroker. Austen & Hobson, Gray's Inn; Lefevre, Birmingham.

Proctor, Edw. Kelly, Hermes Street, Pentonville, Engraver. Tenant, Off. Ass.; Taylor, Great James Street.

Phillips, Philip, Jacob Cohen, and Jacob Phillips, Birmingham, Jewellers. Austen & Hobson, Gray's Inn; Lefevre, Birmingham.

Perry, Tho., Knightsbridge, Victualler. Tenant, Off. Ass.; Selby, Serjeants' Inn, Fleet Street.

Porter, Jos., Canaby Street, Regent Street, Cheesemonger. Edwards, Off. Ass.; Parker, St. Paul's Churchyard.

Ratcliff, Catherine, Knockin-Hall, Salop, Hop Dealer, Horse Dealer, &c. Hayward, Oswestry; Rosser & Son, Gray's Inn.

Robinson, Wm., Stockport, Cheshire, Flour Dealer. Milne, Perry & Co. Temple; Baddley & Son, Stockport.

Rees, John, Bristol, Bookseller & Stationer. Adlington & Co., Bedford Row; Ling, Bristol.

Rowe, Eliz., Wigan, Lancaster, Innkeeper, Brewer, &c. Morris, Wigan; Walmsley & Co., Chancery Lane.

Smith, Nath., Warminster, Wiltshire, Innkeeper. Boor, Warminster; Messrs. Helder, Clement's Inn.

Stockall, Jos., Kidderminster, Coal Merchant & Yarn Factor. Dangerfield, Lincoln's Inn Fields; Brinson, Kidderminster.

Smith, Wm., Portsea, Hampshire, Draper. Lowe, Off. Ass.; Ashurst, Newgate Street.

Stovell, Geo., and Ralph Henry Maddox, Lower Grosvenor Street, Hanover Square, Upholsterers. Hill & Randall, Welbeck Street, Cavendish Square.

Stadders, John, Burpley, Lancaster, Draper. Norris, Allen, & Co., Great Ormond Street; Haworth, Blackburn.

Smith, Wm., Twickenham, Middlesex, Baker. Hopwood & Foster, Chancery Lane; Lackington, Off. Ass.

Stephens, Henry, Aldersgate Street, Stone Mason. Edwards, Off. Ass.; Walters, King's Road, Gray's Inn.

Score, Geo., Lincoln's Inn Fields, and Lambeth Road, Scrivener. Kitchen, Off. Ass.; Sylvester & Walker, Furnival's Inn and Canterbury.

Stright, Simon, Charlotte Street, Blackfriars Road, Hat Manufacturer. Groom, Off. Ass.; Randall, College Hill.

Spencer, Wm., Manchester, Tavern Keeper, &c. Perkins & Frampton, Gray's Inn Square; Ford & Parry, Manchester.

Tydemann, Wm., Great Yarmouth, Norfolk, Saddler and Harness Maker. Groom, Off. Ass.; Ling & Harrison, Took's Court, Chancery Lane; Tuck, Strumpshaw.

Tillet, Charles, Mordon, Surrey, Victualler. Hall & Bishop, Serjeant's Inn, Fleet Street; Clark, Off. Ass.

Timson, Abel, Dovor, Draper. Stokes & Co., Cateaton Street; Clerk, Off. Ass.

Wright, Henry, Southampton Street, Camden Town, Surgeon. Richardson & Talbot, Bedford Row.

Williams, John, Liverpool, Builder. Avison & Co., Liverpool; Adlington & Co., Bedford Row.

Williams, Geo., Henrietta Street, St. Marylebone, Boarding House Keeper, &c. Bright, Symond's Inn, Chancery Lane.

White, Wm., Great Bridge, Stafford, Grocer. Norton and Chaplin, Gray's Inn; Hawkins & Co., Birmingham.

Weaver, Tho., South Street, Spitalfields, Cheesemonger. Hill, Copthall Court, Throgmorton Street.

Worley, Isaac, jun., Bow Lane, London, Tailor. Edwards, Off. Ass.; Holt & Co., Threadneedle Street.

Wilson, Jane, Bolton, Lancaster, Timber Dealer & Builder. Vincent, King's Bench Walk; Bartley & Roberts, Liverpool.

Womack, John, Leeds, Livery Stable Keeper. Strangways & Walker, Barnard's Inn; Blackburn, Leeds.

Winbolt, Busick Joseph, Poultry, Stationer. Belcher, Off. Ass.; Phipps, Weaver's Hall.

Wroe, Thomas, Hollinwood, Prestwich cum Oldham, Lancaster, Cotton Spinner. Adlington & Co., Bedford Row; Law, Manchester.

Yorke, Jasper and George, Cheshunt, Hertford, Millers, &c. Gresham & Miller, Castle Street, Holborn.

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The Legal Observer.

Vol. V. SATURDAY, FEBRUARY 2, 1833. No. CXXIII.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

THE REFORMERS OF THE LAW. No. I.

LORD SOMERS.

It has frequently been said, that a reform in the law, entrusted to lawyers, will avail nothing; that, to work an effectual remedy, “the nuisance must be abated altogether”; that, although we exist in an age of refinement, when every other art and science is complicated and difficult, our laws should be perfectly simple; that, although it be admitted that our politics, our trade, our commercial relations, our medicine, our divinity, our very pleasures, require a long apprenticeship to understand and master; yet that our statute-book should be capable of being read in a week, and our common-law be as familiar to a well-educated school-boy as his Virgil. We have no intention of exaggerating the maxims which have been propounded on this subject—propounded with perfect gravity, and with the apparent conviction of him who uttered them of their truth: but we have heard, and seen it not unfrequently stated and written, that all lawyers are interested in the entire preservation of the present system; that, as figs are not gathered from thistles, it would be weak and absurd to expect any beneficial alteration in the law from the profession; that in this instance all usual rules must be departed from, and that the change must be entrusted, not to those who know most about the things to be altered, but to those who know least; and that thus we should be able to obtain a cheap, plain, and simple

code of laws, that no person of common sense could fail to understand.

To effect consummations so “devoutly to be wished,” it has been further proposed, that the present breed of lawyers should be stopped; and although, as yet, we have not heard that a new massacre of the innocents is to be enacted, yet we have heard it broadly hinted, that it would be no great harm if our fastnesses and strong holds—our Lincoln’s Inn and Temples—were surrounded, and all therein contained indiscriminately put to the sword. With these dangerous opinions afloat,—whilst we cannot but caution our friends to be on their guard,—we are still so perverse as to think that the enunciators of such maxims are a little in the wrong. We are so prejudiced as to think that when all other existing institutions are complicated and difficult to understand or carry on; the laws which govern and regulate all these cannot be quite simple; we are also so fool-hardy as to declare, that lawyers have ever been willing to make all proper changes in the law; nay, that every change that has hitherto been attended with benefit, has been originated, carried through, and perfected by lawyers; that the real reformers of the law have arisen from amidst their body; and that if this country has any especial reason to think herself fortunate among nations, it is, that she has been blessed by a series of legislators, who, having practised all their lives in her Courts, have availed themselves of the knowledge they have there acquired, and the power and influence which it has brought them from time to time, to make all judicious reforms

in the existing system. As this, however, may be considered a mere professional gasconade, we shall put ourselves to the proof, and shall present to our readers a roll of illustrious lawyers, who have thought all other things but ~~small and valueless~~ when compared with the honour and glory of improving the juridical institutions of their country.

We own that in adducing our examples, we have some difficulty in making a selection. Perhaps, however, we cannot find a brighter illustration of this truth than Lord Somers,—as, although he had the misfortune of being a lawyer, yet it will hardly be denied that he was a mighty statesman;—one of the founders of our present liberties; one who, at all hazards, under every disadvantage, and in every way—with pen, and with tongue, and with counsel—devoted himself to the cause of freedom and good government.

Let us then glance at the circumstances of his life. It will be found he was a thorough professional man. He was the son of a country attorney, residing at White Ladies, near Worcester; and having been intended by his father for his own branch of the profession, was used to its technicalities and drudgery from his earliest years; and here then we find that it does sometimes happen—it is just possible—that a man may go through all this, and yet be a virtuous and a liberal-minded man. Had it not happened that Somers is a shining light for all succeeding times, we should no doubt have been told how his faculties were cramped, his mind contracted, and his genius spoiled by his early education. As it turned out, however, the railers at the law have conveniently forgotten this circumstance.

Mr. Somers then went to the bar, and here he was soon engaged in the duties of active professional life, making, very soon afterwards, as we are told by one of his biographers, an income of 700*l.* a-year,—a considerable sum at the time in which he lived. Although an active political writer, and something of a poet, he was necessarily occupied with his professional duties; and his ability in the latter gave him his first great opportunity of distinction;—his being engaged as counsel in the celebrated trial of the Bishops, on the 16th of June, 1688. Soon after the accession of William and Mary, he was appointed Solicitor-General; in 1692, Attorney-General, and in less than a year afterwards, Lord Keeper, and afterwards Lord Chancellor; and was greatly distinguished for his judgments^a.

^a See State Trials, vol. 16, p. 3.

In the extraordinary times in which he lived, the settlement of the government, the securing the rights and privileges of the Crown and the people, necessarily occupied the attention of all; but no sooner were these tolerably safe than Lord Somers turned his attention to the remedy of those abuses in our legal institutions which the lapse of time necessarily introduces. In 1706, although he had then nearly ceased to take any part in politics, and therefore could have no party motive, he introduced into the House of Lords his well known act (4 Ann. c. 16), entitled “An Act for the Amendment of the Law, and the better Advancement of Justice.” The great object of this act was to prevent a failure of justice from mere errors in form. Its useful provisions are now familiar to all lawyers. By them, parties who demur for matters of form, must state their grounds of objection on the face of the demurrer; a defendant is enabled to plead several matters; an actual attornment is rendered unnecessary by tenants; they enforce an affidavit of the truth of all dilatory pleas; they prohibit the issuing of *subpoenas* before bill filed; and, in short, introduce many other remedies for known and admitted grievances. Lord Somers attempted no violent or abrupt change in the law; he knew, that although there was much to be ameliorated, yet that the great frame-work of our legal system was productive of great benefit; that justice was purely administered, and that if there was a country in the world distinguished for the honour and abilities of its professional men, it was his own.

Here, then, we have ventured to adduce our first example of *our* Law Reformers. We have here an instance of a man, whose best exertions were employed for the facilitating the administration of the laws; and yet this man was throughout his life a lawyer:—bred a lawyer; educated as a lawyer; practising as a lawyer; a lawyer in office; and a lawyer out of office. Nevertheless, said one,^a who must have had the best opportunity of knowing him, “he was one of those divine men, who, like a chapel in a palace, remain unprofaned, while all the rest is tyranny, corruption, and folly; a man who dispensed blessings by his life, and planned them for posterity.”

Let not our readers, however, suppose that men of his kind are rare in our profession. We shall show that many such have existed.

^a Horace Walpole's Works, vol. i, p. 430.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XL.

INFANT BANKRUPT.

An infant cannot be made a bankrupt; *Ex parte Sydebotham*, 1 Atk. 146; *Ex parte Barwis*, 6 Ves. 601; *Ex parte Moule*, 14 Ves. 603; although, in a case where an infant had traded for two years, holding himself forth as an adult, the Court refused to supersede the commission upon his petition. *Ex parte Watson*, 16 Ves. 265; *Ex parte Keck*, cit. ib.; and *Hearn v. Rogers*, 9 B. & C. 577. In the following case, however, it has been held that a commission against an infant is not merely voidable, but absolutely void.

It was an action brought by the plaintiff, who had been declared a bankrupt, against the defendant, the assignee under the commission issued against him, for the purpose of trying the validity of such commission. It appeared in the case, that not only the petitioning creditor's debt was contracted by the plaintiff, and the trading upon which he was declared bankrupt was carried on by him, and the act of bankruptcy committed, during his infancy, but also the commission of bankrupt itself was issued out against him whilst he still continued an infant. Upon this short state of facts two questions arose: first, whether the commission of bankrupt was a valid commission in a court of law; and, secondly, whether the plaintiff could dispute its validity against the assignee without giving notice under the nineteenth section of 6 G. 4. c. 16. "That a commission of bankrupt (said Tindal, C. J.) issued against an infant would, under ordinary circumstances, be superseded, upon the ground of infancy, by the Lord Chancellor, has been held to be the law, at least since the case of *Ex parte Sidebotham*, where Lord Hardwicke, on superseding a commission on that ground, said, 'Notwithstanding Lord Maclesfield held, in the case of one *Whitelock*, that an infant might be a bankrupt, yet it has been determined otherwise since.' But the question before us is, whether, without applying to the Chancellor for a *supersedeas*, the commission may, under these circumstances, be held invalid by a court of law; and upon that point we are of opinion that the commission is altogether invalid. We are not called upon to consider whether a commission taken out against a person after his full age, upon a petitioning creditor's debt, a trading, and an act of bankruptcy during his infancy may or may not be supported. In that case, the conduct and acts of the bankrupt after he attained his full age, may have been such as to confirm the debt of the petitioning creditor, and the several contracts which he made in his trade, so as to enable him to be considered such a trader as might commit an act of bankruptcy. But this is a commission taken out against an infant upon a trading carried on, a debt contracted, and an act of bankruptcy

committed during his non-age. The statute 6 G. 4. c. 16, after describing the particular callings and occupations which shall be considered to constitute a trading within the statute, proceeds to enact, that *all such traders* who shall commit certain acts therein enumerated, shall be deemed to have thereby committed an act of bankruptcy. A *trading*, therefore, by the party at the time the act is committed, is one of the conditions upon which such act receives its character of an act of bankruptcy; and it is only against such a trader that the Chancellor has jurisdiction to issue the commission. But, by the law of England, an infant cannot trade, because he cannot be made liable on contracts entered into by him in the course of trade. 1 Roll. Abr. 729; Dyer, 104 b, in marg.; 1 Mod. 137; Strange, 1083. And accordingly, in the case of *Ex parte Moule*, 14 Ves. 602, where the bankrupt applied to the Lord Chancellor to supersede the commission, on the ground that the trading was during his infancy, Lord Eldon, C. although he refused to supersede the commission, as the bankrupt had obtained his certificate under it, observed, that 'A trading of a sort had been deposed to, but that was during his infancy;' and afterwards stated 'That there was enough to have authorized the petitioning creditor to claim the right to try the fact of trading after he became adult, which would support the commission.' In the case of *Ex parte Watson*, 16 Ves. 265, where the bankrupt petitioned that the commission against him might be superseded, on the ground that he was under the age of twenty-one when it was issued, the Lord Chancellor said, that as it appeared, in this case, that the petitioner had held himself forth to the world as an adult and *sui juris*, and traded in that character, and contracted debts to a considerable amount, for two years previous to the commission, he would make no order; but leave the bankrupt to bring his action at law, if he should think proper so to do. Words which imply that at law, if the infancy should be proved, there would be a remedy; and certainly there could be no remedy at law, but by holding the commission invalid. The Chancellor further added, 'I consider him no more entitled to any favour or assistance than a *feme covert* who lives apart from her husband and holds herself out as a *feme sole*, and contracts debts, is entitled to any summary relief from the Judges at common law, who always leave a woman of that description to make the best she can of her plea of coverture in any action brought against her, and constantly refuse to interfere so as to afford her any summary relief.' The same appears from the case in 1 Ves. & B. 494, where it is expressly stated by Lord Eldon, 'That a minor cannot be bankrupt;' and from the case of *O'Brien v. Currie*, 2 C. & P. 283, in which it was ruled, by Mr. Justice Burrough, that a commission of bankrupt issued against a minor is absolutely void. See also *Thornton v. Illingworth*, 2 B. & C. 826. The second point raised on the part of the defendant is, that even if the

commission cannot be supported by reason of the infancy of the plaintiff, still that the evidence was inadmissible, as no notice had been given under the nineteenth section of 6 G. 4. c. 16. As to that point, it is to be observed, that the parties came to the trial of this cause with the full knowledge on the part of the defendant of the fact intended to be disputed; viz. whether the plaintiff was an infant at the time of the trading and the issuing the commission. All the evidence for and against the infancy was brought before the jury, and the jury found that he was an infant. In a case, therefore, where there was actual knowledge of the point in dispute, although no formal notice where the allowing of the objection, if a valid one, would go no further than to a new trial, in which the Court would still allow the plaintiff to give the formal notice, where, if such notice was given, the same facts would by themselves be conclusive against the commission; and where the objection itself does not appear upon the Judge's notes, and the parties do not agree between themselves whether it was distinctly taken at the trial, we do not feel ourselves called upon to give an opinion whether the case falls within the nineteenth section of the Bankrupt Act or not. Upon the whole, therefore, we think the rule for entering a nonsuit ought to be discharged."

Rule discharged.—*Belton v. Hodges*, 9 Bing. 369.

NEW COURTS AND LAW OFFICES ON THE ROLLS ESTATE.

To the Editor of the Legal Observer.

Sir,

IN the numbers of your Observer of the 6th of October, 1832, and the 5th of January, 1833, are certain remarks and calculations relative to the proposed erection of New Courts and Law Offices on the site of the Rolls Estate.

The expediency of such a measure is obvious: why not, then, I would ask, extend the improvement at once, and seize the present opportunity of fixing *all* the Superior Courts, both of Law and Equity, in one central spot?

That there would be ample room for carrying this measure into effect, is clear from Mr. Cooper's statement, if correct; since the buildings enumerated in his proposition are intended to occupy two sides only of the quadrangle; and if each of the remaining sides would afford sufficient frontage for *twenty-four* sets of chambers (according to his estimate), one of them would be found large enough to contain all the Courts to be transferred from Westminster, and the space vacated thereby might well be appropriated to the construction of a room for the assembly of our re-

presentatives more worthy of the nation, whose organs they are, than the present miserable House of Commons.

Those who dissent from this alteration on the score of *expense*, I refer to Mr. Cooper's ingenious, and, as I believe, accurate demonstration; that there exists a vast fund, the employment of which, in a measure of public utility, would not only work injustice to none, but would, on the contrary, besides effecting the permanent advantages which are the immediate objects in view, be of itself a national benefit, by circulating so much capital, otherwise lying idle and unprofitable.

Let us, however, assume Mr. Cooper's project to be chimerical: will it, then, be contended, that whilst enormous sums are yearly expended in the mere embellishment of palaces and public buildings to gratify public taste, this modern Tyre *cannot afford* the comparatively trifling outlay requisite for the substantial convenience of all classes of her subjects, and especially of her "Merchant Princes?" Not that I would be understood as objecting to these national ornaments, for I look upon them as necessary to the credit of our country; on the same principle that garments of a fine texture are necessary to, or, in other words, befitting a person who moves in the rank of gentlemen.

To those, and many they are, who feel a predilection for Westminster Hall, and attach to its Courts some undefinable idea of veneration, I answer, that these identical Courts are but creatures of yesterday's growth, which exhibit no vestige or memorial of the legal heroes of "olden days;" and therefore cannot be associated with them; and I may add, that, however natural and praiseworthy such a feeling is, when moderately indulged, it degenerates into a selfish and criminal weakness, like all other good qualities, if it be carried to excess, and allowed to interfere with the accomplishment of a work of real benefit.

We are, Mr. Editor, perfectly unknown to each other, and shall, probably, so continue; but I collect from your pages that we agree upon the principal point, viz. that it is most desirable to establish one grand central forum; and I send you this in hopes that, if you indulge me by making it public, the advocates on our side may increase in number and talent, until the "powers that be" convinced of the utility of the proposed plan, assent to its execution, and give to what is at present, our

"airy nothing,

"A local habitation and a name."

In the mean time I beg to subscribe myself,
Yours respectfully,
A SENTINEL.
23d Jan. 1833.

INCORPORATED LAW SOCIETY OF THE UNITED KINGDOM.

THE Inauguration Dinner of the Members of this Society took place in their Hall, on Wednesday the 30th of January, when two hundred and thirty Members assembled. Mr. Took, the Member for Truro, presided. The usual loyal toasts were given. That of the King, as the Royal Founder of the Society, by His Majesty's Charter of Incorporation, was announced with every expression of respect and gratitude, and enthusiastically received. A similar testimony of respect was paid to the Queen and Royal Family, the Chancellor, and the several Judges of the Courts of Westminster and Doctors' Commons; and on proposing the healths of the Attorney and Solicitor General, and of the Members of the Bar, the Chairman introduced several appropriate and animated remarks on the connection subsisting between the various branches of the Profession.

To these toasts, succeeded that of "Prosperity to the Incorporated Law Society of the United Kingdom." The Chairman, after adverting to the origin and progress of the Institution, eloquently dwelt on the important advantages which the grant of the Charter had conferred—a boon for which they were indebted to the special grace and favor of His Majesty; but which was fully justified by the improved state of the Profession. The Charter, by giving the Society "a local habitation and a name," had thus enabled the profession, with all the weight attached to its collective character, to make its complaint, by petition, remonstrance, and appeal, to Parliament, the Bench, and the several other constituted authorities, on occasions of professional grievance. The public, he observed, would also be benefited by the additional guard it would afford to their peculiar treasure—*professional character*,—by discouraging the animosities which formerly prevailed among practitioners, often occasioning or increasing useless litigation, to their own great inconvenience and the serious injury of their clients;—by the gradual introduction it would open to the junior Members of the Society, who would thus, in improved and improving succession, be enabled to sustain and extend the credit and honor of the profession;—and by excluding or discarding unworthy members, who bring obloquy upon it.

The Chairman also called the attention of the Members to the important object of *assembling daily in the Hall*, by which many benefits would arise, in facilitating the transaction of business, and promoting liberality of conduct towards each other. He therefore strongly exhorted the Members to make it a point of duty to record their appearance in the Hall as frequently as practicable, and to make appointments there for meeting such of their professional brethren of the Society as reside at a distance.

The meeting was also addressed by several of the Members, in proposing healths or toasts, or returning thanks, amongst which may be particularly noticed, Mr. *Frere*, Mr. *White*, Mr. *Shadwell*, Mr. *Wilde*, Mr. *Bigg*, Mr. *Tallents*, and Mr. *Tindal*.

Mr. *Holme*, in acknowledging the thanks to the Donors to the Library, enlarged with great force and effect on this essential part of the Society,—earnestly exhorting the members to hasten its completion by early contributions. It appeared that three of the Judges, about thirty of the Members of the Bar, and one hundred Attorneys and Solicitors, had made donations, amounting to upwards of 1500 volumes. We regret that we are unable to do justice to the many apt and humorous remarks made by Mr. Holme, which excited the warm approbation of the Meeting, and were followed—(as the best effect of his address)—by a very general engagement of the Members to obey the call, which had been made with such good feeling.

The successful completion of the Club department, under the directions of the able and zealous Committee to whom it was confided, was the topic of much and deserved eulogium.

After the accustomed marks of respect had been paid to the Committee of Management, the Club Committee, the Chairman, Vice-Chairman, Stewards, and Secretary, the meeting broke up about eleven o'clock, after an evening passed in great cordiality, and which promises eminently to increase the success of the Institution.

SELECTIONS FROM CORRESPONDENCE.

No. XVIII.

EXAMINATION OF ATTORNEYS.

Sir,

I WAS not a little surprised in reading a letter signed S., which appeared in the last number of the *Legal Observer*, on the above head. In the letter your correspondent says, "that any examination should be directed to the *respect-*

ability, and not to the *capacity*, of the examinant. The profession labours under its present discredit from the sharpers, and not from the fools, which it contains. *No one is troubled with a stupid lawyer*—if he is not competent, he is but little employed. In that little he certainly does not trouble his adversary; and *if guilty of any glaring negligence, he is personally liable to his client.*" From this opinion I beg leave to differ, and to say, that *capacity*, and not *respectability*, is the chief object to which an examination should be directed. For suppose a person possessed of real as well as personal property, employs a *respectable* but *ignorant* attorney to prepare his will; the attorney accordingly does so, and so far as the testator knows, thereby carries his intentions into effect. The testator lives many years, and then dies without having altered or revoked his will. The persons to whom the property is devised take possession under the will, supposing all to be right. Soon after the person, who, had there been no will, would have been entitled as heir at law of the testator, to his real, and it may be personal property, taking nothing by the will, or not to the extent he would had there been no will, lays it before a clever professional gentleman, who advises him that the will is not expressed in a legal manner, so as to pass the real or personal property. He then proceeds, and sets aside the will, and afterwards against the parties in possession under the will, by ejectment, to obtain possession, and files a bill in Chancery for an account of the proceeds of the property; and these parties, after some hundreds or thousands of pounds have been spent in law, are ousted, and obliged to account, and their only remedy is an action against the *respectable* and *ignorant* attorney who prepared the will, who, after the lapse of so many years, may be defunct, bankrupt, or insolvent, or have left the country; or if the attorney be then living and in good circumstances, there may be great difficulty in the proof—and it requires strong proof of *crassa ignorantia*, or *crassa negligentia*, to support an action against an attorney, for amends to his client. What satisfaction will it be, then, for the parties damaged to know, or be informed, that the attorney who prepared the will was a *respectable* attorney, in the opinion of the persons appointed by the Law Courts at Westminster to examine into the same at the time of his admission.

The above observations do not apply to the case of wills only, but equally so to deeds of conveyance, of gift, and to every species of assurance—more especially to marriage settlements.

After perusing the foregoing observations, I am sure your correspondent S., as well as every other person, will concur with me, when I say that *capacity*, and not *respectability*, is the chief object to which an examination should be directed. Besides, were *respectability* to be the qualification, what a risk persons would have to encounter in placing their children with attorneys for five years: for after so doing, and expending some hundreds, they might be told

they were not respectable enough to be admitted. Thus their money would be wasted, and the persons refused admission would, being qualified for no other profession, be thrown on the wide world.

Again, what criterion would there be to enable a person to judge of a young man's respectability, just entering into the world? Were the possession of property to be the qualification, parents with a limited income would be prevented from bringing up their children to the law—and guardians, those entrusted to their care. With few exceptions, the most clever and eminent attorneys, are persons who, at the time of their admission, could neither boast of wealth, or of wealthy parents, but who by dint of perseverance have attained to eminence.

I must, in conclusion, apologise for trespassing so far on your kindness; but the importance of the subject to the public at large is my plea.

E. H.

Plymouth, Jan. 22d, 1833:

OPERATION OF JUDGMENTS AGAINST REAL ESTATES.

To the Editor of the Legal Observer.

Sir,

It has often been to me a matter of surprise, that there has not, ere this, been an alteration made in signing judgments in the several Courts of Common Law, and especially where such judgments are signed with a view to charge the estates of the defendants. I mean such an alteration as would, *at once*, give the party making the search for judgments the information required by him; but it appears that it has been allowed to pass unnoticed by all, and that too for ages. The inconvenience of the present mode of entering judgments, must be obvious to all professional men.

An estate is, for instance, sold or mortgaged, and the person's name, selling or mortgaging such estate, shall be Clarke, Jones, Williams, Brown, or any other common name; the title approved, except as to searching if any judgments appear against the party selling or mortgaging, you proceed to make the necessary search, and find perhaps in a long search fifty or sixty judgments against a person of the same christian and surname; how are you to satisfy yourself that those judgments are not against the vendor or mortgagor? The only means of endeavouring to ascertain, I apprehend, is by going to the respective attorneys and requesting them to give you the necessary information; that is to say, as to what Clarke, what Jones, &c. and of what place, is it against whom they have such a judgment, and whether it has been satisfied; but even in this manner it is quite impossible, in many cases, to obtain the necessary information, as the attorney who signed such judgment may have died, and the papers, &c. relating thereto have gone out of his possession previously, so that his executors or successors could not give any information whatever on the subject; in which case, what is to be done to remedy the evil? You must either take the word of the vendor

or mortgagee, that such judgments do not relate to him, or object to complete, &c.; and then how stands the purchaser or mortgagee who has entered into a contract, if he adopts the latter? Why he stands, as the common expression is, between two fires; he runs a risk, by completing, of being called upon to pay off the judgments, and if he refuse to complete, of having a bill in equity filed against him to compel him to do so!!

This is, and always will be, the state of things, while the present insufficient mode is allowed to be; and yet the most simple method might save (I think I may say) the *whole* of this great inconvenience and expense, and, in many cases, most dangerous delay, merely by passing an act of parliament, that in future in all judgments hereafter to be signed, in addition to the christian and surnames of the defendants, their true place of abode and description should be inserted in the judgment paper, upon the roll, and in the judgment books; and if the abode of the defendants be not known at the time of signing such judgment, then that their known *last* place of abode be inserted. And further, that after a judgment shall have been satisfied, it shall be imperative upon the plaintiff to cause satisfaction to be entered upon the roll within a *limited time*, at the expense of the defendant; and in case of default in compliance with the act, a penalty should be inflicted upon the party neglecting.

I trust that some of your more able correspondents will exert themselves in endeavouring to cure the evil complained of.

T. B.

THE LORD CHANCELLOR.

Sir,

I quite agree with the writer of the Letter to the Lord Chancellor, in your number of the 12th of the last month, that persons in his Lordship's exalted station are always sure to meet with more than a due proportion of praise and of censure; and although I am personally an admirer of his Lordship, I am very willing to concede that the praise which you say is bestowed upon him by many, is carried to an extravagant extent: but I will venture to call your attention to the objections which you say are made to his Lordship's conduct.

Your correspondent, or his informant, professes to pass by the measure of the new Bankruptcy Court, as a mixture of jobbery and blunder; and I will venture to pass it by also, with this single observation:—That I believe there is not a merchant or tradesman in the city of London, who had occasion to resort

to the old lists of commissioners, and who has been called into the new Court, who will not readily admit that a most beneficial improvement has taken place.

• We readily insert this letter, with the single alteration of the signature, and the observation that our present correspondent has too often assumed that the statements in the Barrister's letter are his own; whereas he merely mentions them as the talk of the day, which he says expressly *he* does not believe. Ed.

to the old lists of commissioners, and who has been called into the new Court, who will not readily admit that a most beneficial improvement has taken place.

It is then stated, that the Chancellor's great object has been to benefit himself and spoil the office for all successors; and that having provided for both his brothers, and all his other pets, he has very willingly done away with half a score of *little* offices, which he did not want. Now let us try this by facts, which are on record. How has he benefited himself? and how has he spoiled the office for his successors? That he has reduced the value of his office, both for himself and his successors, I readily admit. It is said he has provided for all his pets. He may have provided for some; but who that knows any thing of the office of a Lord Chancellor, must not know that there are plenty of unsatisfied claimants left. It is said he has provided for both brothers. It is true that he has made one a Master in Chancery; but I have never heard it insinuated that the individual was unfit for the office. To his other brother he gave an office one day, because it was necessary to fill it *pro tempore*; but on the next day, he brought in an act to abolish this same office; and thus, having held his own high office for more than two years, he has done that which I believe no Chancellor ever did before—left a brother without any provision at all.

Who can this Barrister be who writes to you of half a score of *little* offices done away with? Does he call the office of 10,000*l.* a year, held by the nephew of the former Chancellor, Thurlow, a little office? Does he call the other offices which are abolished, and which a return to the House of Lords shews hath produced about 10,000*l.* a year more, and all which former Chancellors have used for their own emoluments, or as provision for their families, does he call these little offices? Aye, but it is suggested that this patronage would never fall to him. Has the Barrister forgotten, or never heard, that before the Chancellor brought in this Abolition Act, Mr. Scott, the son of Lord Chancellor Eldon, had died; that he held several of these offices in reversion; and that he was in the actual possession of two of them, producing 2500*l.* a year; and that all this patronage had actually accrued to the Chancellor, and was abolished by his own act!

Your letter states, however, that he has secured to himself the large sum of 5000*l.* a year for his life; and the informant would really have it appear as if this were an entire new creation; but does not every body know that all Chancellors have had 4000*l.* a year, and that the only thing done now is to increase this 4000*l.* to 5000*l.*? Now, for what is this additional 1000*l.* a year given? Not only for the reversionary patronage given up, but also for the 2500*l.* a year, which, if the present Chancellor had followed the example of former Chancellors, he might have been in the receipt of at the present moment, and might have kept to the latest hour of his existence.

Lord Northington held these same offices

during his life; and by putting them in the names of trustees, bequeathed them by his will to his four daughters. Let it be observed further, that the pension is to commence only when the Chancellor gives up the Great Seal; whereas he might have held the Great Seal and kept the other offices at the same time.

Again, your correspondent, or his informant says, that the Chancellor has fixed his salary at 14,000*l.* a year, and that it is notorious that Lord Eldon and Lord Lyndhurst frequently received much less. Where does your correspondent, or his informant, learn this, which is a notorious falsehood? If he will refer to the returns made to Parliament, he will see, that the present Chancellor, in his first year, received 700*l.* more than this 14,000*l.*, and that Lord Eldon and Lord Lyndhurst always received a great deal more; and that the former of those Lords received, in one year, 22,000*l.*

Again, it is said, that the Chancellor has got rid of his Bankruptcy business, and stripped his office of other duties.—As to the Bankruptcy business, is there a barrister or solicitor who does not know that, for many years past, all bankrupt petitions were heard by the Vice-Chancellor; that appeals only came to his Lordship; and that the same appeals now lie to him from the Court of Review? What other duty he has cast off, I believe it will puzzle your correspondent to point out. I believe it will equally puzzle him to state when or where the Chancellor has boasted of his own doings. When attacked, he has made the necessary statements to defend himself; and when opening his measures, he has of necessity gone into such details as were called for to explain the objects he had in view. Friends or admirers may have lauded his conduct; but I doubt much if an instance of self gratulation can be produced.

I am, &c.

28th Jan. 1833.

Z.

THE LEGAL REMINISCENT.

No. III.

FROM "The Note-Book of a Retired Barrister," we extract the following passages of a Sketch of Mr. *Serjeant Cockell*.—

"His figure conveyed the idea which we annex to that of a well-fed abbot or prior of former days. His person was round and of ample dimensions: his countenance presented the full bloom of jollity and good humour, and his temper and manners were in the most perfect harmony with his appearance. He excelled in burlesque, and in pointing it so as to take off the effect of the testimony of an adverse witness, by holding him up to ridicule. The following anecdote will afford some idea of his manner.

"An action was brought in the Court of

* Fraser's Magazine for January 1833, p. 48.

Common Pleas, by a carpenter and builder from Sussex, to recover the amount of his bill for building a house for the defendant at Battle. In actions of that description, surveyors always form part of the witnesses necessary to prove the case. Those who are in the habit of frequenting Courts of Justice are well acquainted with the disgusting consequence which they assume, and with the pompous affectation with which they give their evidence. The cause came on to be tried at Guildhall, and one of this self-important fraternity was called as a witness to prove the value of the work done. He gave his testimony with the accustomed dignity of his profession. Sergeant Cockell cross-examined him, and worked him up to the highest pitch of burlesque consequence. This was done by an affected deference to his opinion, and a mock affectation of respect to it, which was seen by every person in court but himself. He was requested by the Sergeant to produce the original estimate, which had been made by him, of the value of the work charged, for his perusal. This was put into his hand. It set out the names of the plaintiff and of the defendant, and the several items which composed the charge, and concluded, 'I value at the sum of 350*l.* the above work, done at Battle, in the county of Sussex.' As that stands written, I think it would seem to be a difficult matter to extract from it a *Nisi prius* joke; but the Sergeant found no difficulty in it. He had, by his cross-examination of the witness, made an exhibition of his self-sufficiency, and possessed the jury with the ridiculous features of his character. When he came to address the jury: 'Gentlemen,' says he, 'a surveyor is an anomalous kind of animal; he can neither think, nor speak, nor write like a common person. His perfect conviction of his own importance is shewn in every word he utters, and in every sentence he writes, even to the making out of a carpenter's bill. This Sussex surveyor is not content with giving his estimate in plain language, and signed with his name; he must assume the style of an ambassador, and subscribe as an envoy would a treaty of peace. Look at his estimate and bill:—He sets out the particulars of the charge, which he pronounces to be of the value of 350*l.*, for carpenter's work—that is plain English; but how does it conclude?—in the dignified language of diplomacy, 'Done at Battle, in the county of Sussex;' signed as our ambassador at Paris would sign a treaty of peace for Great Britain.' The manner in which he read this was inimitable. The word *done* had begun a line in the surveyor's estimate, and being spelt with a large D, suggested to him the whimsical observation.

"Sergeant Cockell's fame originated at the quarter sessions—I think it was at those of the West Riding of Yorkshire, and at Manchester. It is a kind of practice which requires no great extent of legal learning; but powers of humour are a valuable talent, and of it the Sergeant's fund was inexhaustible. It was therefore from his ample possession of that gift that the Court of Quarter Sessions was the stage on which the

Sergeant shewed to most advantage; for it must be admitted that his reading was limited, his knowledge of law superficial, and his acquaintance with pleading nothing. He used to say, that the general issue was the only plea worth a farthing; he never wished to see any other. If he had a brief in a cause in which the pleadings ran to any length, if his junior happened not to be in court when the cause was about to be called on, he looked round for him in evident dismay, alarmed lest some point should be raised, or objection taken to the pleadings, which he was sensible he was wholly incompetent to answer; but with his favourite plea of the general issue, no man wielded it with more effect in the defence of his client.

“A settlement case has no pleadings to encumber it, and a traverse is a mere matter of evidence. These form the important business of the quarter sessions. In these the Sergeant shone, unperplexed by legal difficulties, or hampered with the toils of special pleading.

“His talents were not, however, equal to the lead of an important cause; in the conduct of those of an opposite description, no one excelled him. When his opponent happened to be Sergeant Leblanc, who had addressed the jury with his habitual coldness of manner and starch precision, Sergeant Cockell turned it into a laugh, and gained a verdict by a joke, at the expense of his more grave brother Sergeant.

“He cross-examined a witness with great dexterity and singular address. It was not his habit to browbeat witnesses,—a course which oftener offends the jury than benefits the client. He conciliated them by uniform good humour, and by that means often drew from them admissions favourable to his case. With the jury he gained credit for sincerity by a well-assumed confidence of self-conviction, and the impression was confirmed by his earnest mode of delivery. In cross-examining, he had a significant manner of pronouncing the monosyllable *Eh*, with one eye closed and the other fixed on the witness. His manner conveyed to the jury the most intelligible expression of his own incredulity of what the witness was stating, and raised in their minds corresponding doubts of his credit.”

We omit the description of his convivial qualities, and an anecdote not precisely suited to our pages.

SUPERIOR COURTS.

Court of Chancery.

PROPERTY IMPOUNDED.

Where property can be identified, the Court will grant an injunction to restrain trust money deposited in the bank.

In the year 1819, Mr. Frankland Lewis, Patentee of the office of Clerk of the Bills of En-

try in the port of London, demised to “The Directors of the Customs Annuity Benevolent Society” the profits of that office, for 2000*l.* a-year. The directors committed to Mr. Ogilvie, their secretary, the management of the office;—that is, the printing and publishing of the bills of entry. By a deed, entered into between the directors and Mr. Ogilvie, the latter was to pay the annuity of 2000*l.* a-year to Mr. Lewis, and of the residue, after such payment he was to pay one-half to the directors, and to retain the other moiety to himself; but it was particularly stipulated, that if the latter moiety should exceed 2000*l.* a-year, he (Mr. Ogilvie) was to pay the surplus to the directors, retaining to himself 10*l.* per cent. on such surplus. By another agreement, subsequently entered into between the directors and Mr. Ogilvie, he was bound to pay to them 1200*l.* for three years thence next ensuing, and after that period, 1500*l.* a-year during the term demised, retaining to himself the whole surplus, after paying to Mr. Lewis his 2000*l.* a-year. The directors instituted a suit in 1829 to set aside this latter agreement; and that suit coming on to be heard before the *Master of the Rolls* last June, his Honour, after a hearing of several days, made an order to set aside that second agreement, and decreed Mr. Ogilvie to account for all the profits of the office from the year 1822, declaring him to have been a trustee for the directors the whole of that time. Mr. Ogilvie died soon after that decree, and a Mrs. Coe took out letters of administration of his estate and effects. The accounts under the decree had not been taken at the time of Mr. Ogilvie’s death. From the time of the first deed between the directors and Mr. Ogilvie, he kept too distinct and separate accounts with his banker, one being his private account, and the other, the account of the receipts and payments in respect of the patent office. This latter account was composed exclusively of the moneys on account of the publication of the bills of entry, and there was at Mr. Ogilvie’s death a balance in his favour, on *this* account, of 1000*l.* The defendants (the directors) filed a supplemental bill against the bankers and administratrix; and upon certificate of that bill filed, and upon affidavits verifying the above facts, Mr. *Jacob*, on their behalf, moved for an order of injunction to restrain the bankers from paying, and the administratrix from receiving, that sum, alleging that Mr. Ogilvie, upon the accounts taken or to be taken, was indebted to the plaintiffs to the amount of 3000*l.* and upwards, and that the 1000*l.* in the bank was in fact the property of the plaintiffs, recoverable by them at law.

The *Lord Chancellor*, being of opinion that the affidavits sufficiently identified the balance to be part of the trust-money deposited by Mr. Ogilvie in the bank, granted the injunction. *Hume v. Hankey*, Lincoln’s Inn, Dec. 11, 1832. L. C.

Rolls Court.

WILL.—DEVISEE IN TRUST.—DISCLAIMER.

A person who is named devisee in trust and executor in a will, and who, without formally renouncing the trust, or proving the will, assists a co-executor in a friendly way in the disposition of the trust property, is not liable to account. A Disclaimer is not necessary to discharge such person from responsibility, although it is advisable to disclaim.

The Master of the Rolls, in giving the following judgment, stated as much of the facts as made the points in dispute sufficiently intelligible. "The bill," said his Honor, "sought to charge the defendant with an improper interference with, and an undue disposition of, property devised upon certain trusts to him and other executors named in the will. The testator died in the year 1800, having devised by his will, duly executed and published, certain property, which comes under the denomination of real estate. By this devise, one portion of the property was to be settled on the testator's wife for life, and to remain unsold: the other moiety he directed to be sold, and the residue of the proceeds, after payment of testator's debts, funeral, and testamentary expenses, was to be secured, and the profits thereof to be paid to the wife during her life. Her share of the real estate was also to be sold after her death, and the proceeds thereof, together with the residue of the proceeds of the moiety already sold, were to be divided among the testator's children. The wife was appointed executrix; and the defendant and another person were named devisees in trust and executors. The widow alone proved the will. The defendant, without either proving the will, or renouncing the trust, assisted her in performing the office of executrix, especially in making sale of the property. To the charge of thus taking upon himself the disposition of the property, the defendant answered, that he did so from the consideration of being the particular friend of the testator. His Honor did not think this interference was of such a nature as to subject the defendant to this suit, as he had never acted as executor, and a disclaimer was not necessary to free him from responsibility. An estate did not vest in a trustee named against his will. If he shewed by his conduct an intention not to accept the trust, a deed of renunciation was not necessary. As a general practice, indeed, it would be better if such executors and devisees in trust as did not mean to accept the office, would make a formal renunciation, as otherwise they subjected themselves to the trouble and expense of proving that their conduct was such as shielded them from liability to account. His Honor's opinion was, that the bill be dismissed; and as the transactions which were made the foundation of the charges against the defendant had taken place thirty years ago; and the object of the bill was, by technical objections, to make the defendant answerable for acts which were

the result of kind and friendly feelings, he thought it ought to be dismissed with costs.—*Stacey v. Elph*, at Westminster, January 26th. M. R.

King's Bench Practice Court.

PRISONER.—DETAINEE.—SHERIFF.—EXECUTION.

Where a defendant was wrongfully in custody at the time of a ca. sa. coming to the hands of the sheriff, it was held, that the ca. sa. attached from the time of its delivery to the sheriff, so as to operate as a legal detainer.

On shewing cause against a rule for discharging a defendant out of the custody of the sheriff, it appeared, that the defendant had been wrongfully detained at the suit of a person whose debt had been discharged; and that the plaintiff's writ had come to the hands of the sheriff, while the defendant was so in custody. On this writ the sheriff continued the defendant's detention. The question therefore was, whether the writ attached from the time of its delivery into the hands of the sheriff, so as to make the defendant's detention under it legal, notwithstanding the illegality of the original custody.

Littledale, J., was of opinion, that the writ attached from the moment of its lodgment with the sheriff, so as to render the defendant's detention under it legal, notwithstanding the illegality of the original detention.

Rule discharged.—*Arundel v. Chitty*, M. T. Nov. 14th, 1832. K. B. P. C.

JUDGMENT ON AN OLD WARRANT OF ATTORNEY.—FORM OF AFFIDAVIT.

The mode of stating time in an affidavit to authorize the entering up of judgment on an old warrant of attorney.

On making a motion to enter up judgment on an old warrant of attorney, the affidavit of the defendant's life during the term, stated that he had been seen "about six days since;" the affidavit bearing date on the 20th of November.

Littledale, J. held this statement of the time insufficient, because the meaning of the word "about," depended on the meaning which the person making the affidavit attached to it. *Willis v. Jervis*, M. T. 1832. K. B. P. C.

ATTORNEY AND CLIENT.—INTEREST.

If money has come into the hands of an attorney improperly, the Court will not compel him to pay it over to his client with interest.

A motion was made against an attorney, requiring him to pay over a sum of money, which, it was alleged, had come improperly into his hands, with interest.

Littledale, J. refused the application as to the interest, but granted it as to the principal.

Rule refused as to the interest, and granted as to the principal.—*Fenn v. Wild*, M. T. 1832. K. B. P. C.

EJECTMENT.—SERVICE OF DECLARATION.

Defendant's acknowledgment of receipt of declaration insufficient, for want of stating the time.

De Saumarez moved for a rule to show cause why the service of the declaration of ejectment should not be deemed good service. The affidavit stated that defendant did, on the first day of November, serve the tenant in possession with declaration, by delivering the same to his clerk on the premises, and that the tenant did, on the second day of November, call on plaintiff's attorney, and acknowledged the receipt of the said declaration.

Per Littledale, J.—It does not appear that the declaration and notice were received before the first day of term: the affidavit is therefore insufficient.

Rule refused.—*Doe d. Bennett v. Row*, Nov. 5th, 1832. K. B. P. C.

BAIL.—DESCRIPTION OF RESIDENCE.

"What is a sufficient description of the residence of bail."

Bail were opposed on the ground that their residence was not sufficiently described in the notice. They were described as residing at "Chigwell Road," without mentioning any street of that village.

Littledale, J. held the description sufficient, as Chigwell Road was well known as a village.

Bail passed.—*Smith's bail*, Nov. 18th, 1832. K. B. P. C.

Court of (Equity) Chancery.

FRAUDULENT CONTRACT.—PROPERTY IMPOUNDED.

Where, after a decree to set aside a contract for fraud, the property acquired by such fraud can be clearly traced and identified, it may be followed and impounded.

Where property obtained by the fraudulent contract is applied to the purchase of other property, the substituted property, if clearly traced, may be impounded.

So also, if the substituted property be transferred to a third person, without valuable consideration—Held, that that person is trustee for the party first obtaining the property by the fraud; and this Court will grant an injunction to restrain both from dealing with the property.

Lord Lyndhurst gave the following judgment upon a motion made before him in Michaelmas term last, under circumstances which sufficiently appear from the judgment itself.—The original bill (said his Lordship) had been filed for the purpose of setting aside a contract

entered into by the plaintiffs; directors of the British Iron Company, with Mr. John Attwood, for the purchase of certain iron works, situated in Staffordshire, upon which contract a sum of upwards of two hundred thousand pounds had been paid. The Court had made a decree, by which the said contract was declared null and void, on the ground of legal fraud and wilful misrepresentation, and ordered that the plaintiffs should account for the profits of the works in their possession, and that the defendant should refund all the money received under the contract, together with the dividends which accrued on it. A supplemental bill was since filed, and a motion was made for the purpose of asking the Court to interfere, and prevent the defendants from parting with or transferring a quantity of stock, amounting to the sum of £92,760^l, alleged to be the produce of bank notes received by the defendant John Attwood from the British Iron Company, under his contract. Now, as the contract has been set aside as fraudulent, it would clearly follow that nothing done under it could be considered as legal, or could stand; therefore if those notes, so received by Mr. Attwood, had still been in his hands, it is clear that they would still be considered as the property of the British Iron Company. Many cases at common law had been cited for the plaintiffs, which, on the part of the defendant were said to be no precedents for that Court, and that they had been improperly brought under its notice^b. He considered they were very properly cited for the purpose for which they were used, *viz.* to shew that where property acquired by fraud was clearly traced, it could be followed. It was said for the defendant, that this case was similar to that of *Cator v. Pembroke*, 2 Bro. C. C. 282. There Lord Bolingbroke sold an estate as free from incumbrances, and applied the purchase-money to the purchase of stock, which was vested in trustees. Cator applied to the Court, not to set aside the contract, but that he might have a *lien* on the stock, to compensate him for the loss he sustained by the incumbrances; in fact, by his very application he confirmed the contract. In his opinion that case did not at all apply to the present one. These notes having been laid out in the purchase of stock, the next point to be considered was, whether any injunction should issue as applying to the said stock. It was decided, that where property obtained by fraud was applied to the purchase of other property, the substituted property, if clearly traced, was liable, and could be followed: therefore, if this stock had still continued to stand in the name of Mr. J. Attwood, and had been clearly proved to be the produce of the notes in ques-

^a *Vide ante*, p. 47.

^b Among those cases were that of *Taylor v. Plumer*, 3 M. & S. 562, and the cases there cited. See also the case of *Hane v. Deighton*, Amb. 409; *Watts v. Whorwood*, 3 Atk. 180; *Ex parte Sayers*, 5 Ves. 100; and *Leach v. Leach*, 11 Ves. 311.

NEW KING'S COUNSEL.

There have been frequent rumours during the Term, of a batch of Silk Gowns being about to be made. It seems, however, that the Chancellor has not acceded to the applications made; though there is still a report that Messrs. Blackburn and D. Pollock may be so honored ere the next Term.

NEW SERJEANT.

Mr. Talfourd has been called to the degree of Serjeant at Law.

A PRISONER'S CONVICTION FOR STEALING HIS OWN PROPERTY.

An account of a man being convicted at the Manchester Sessions for stealing his own goods, has lately been inserted in the newspapers, with a heading evidently expressive of very great astonishment at, if not also disapproval of, such a proceeding.

There can be no point of law more clear than that "if a man take his own goods from the possession of a bailee, and the taking of them have the effect of charging the bailee, it is larceny in the taker." In *R. v. Bramley*, R. & R. 478, it was held (in confirmation of the above), that if a man take goods out of the possession of a person in whose hands they are for safe custody, and the effect of the taking would be to charge the bailee, such taking would amount to larceny. See also R. & R. 470, and 1 Hale, *passim*.

The case at Manchester goes on all fours (to use a favourite legal expression) with the above doctrine. Messrs. Pickford and Co. are in possession of a certain box, as carriers. The prisoner (the owner); having fraudulently removed the box from the premises, comes shortly after and demands his box, or the value of it. It is clearly within the spirit of the law: the equity of such a conviction is another question.

SITTINGS IN CHANCERY.

Seals, Re-hearings, Appeals, and Petitions, before the LORD CHANCELLOR, after Hilary Term, 1833.

Thursday, February 7	{ THE FIRST SEAL—Motions.
Friday, - 8	{ Re-hearings and Appeals.
Saturday, - 9	
Monday, - 11	
Tuesday, - 12	
Wednesday, - 13	

Thursday, - 14	{ SECOND SEAL—Motions.
Friday, - 15	{ Re-hearings and Appeals.
Saturday, - 16	
Monday, - 18	
Tuesday, - 19	
Wednesday, - 20	
Thursday, - 21	{ THIRD SEAL—Motions.
Friday, - 22	{ Re-hearings and Appeals.
Saturday, - 23	
Monday, - 25	
Tuesday, - 26	
Wednesday, - 27	
Thursday, - 28	{ FOURTH SEAL—Motions.
Friday, March 1	{ Re-hearings and Appeals.
Saturday, - 2	
Monday, - 4	
Tuesday, - 5	
Wednesday, - 6	
Thursday, - 7	{ FIFTH SEAL—Motions.
Friday, - 8	{ Re-hearings and Appeals.
Saturday, - 9	
Monday, - 11	
Tuesday, - 12	
Wednesday, - 13	
Thursday, - 14	{ SIXTH SEAL—Motions.
Friday, - 15	{ Re-hearings and Appeals.
Saturday, - 16	
Monday, - 18	
Tuesday, - 19	
Wednesday, - 20	
Thursday, - 21	{ SEVENTH SEAL—Motions.
Friday, - 22	{ Petitions.

The Court will not sit after Wednesday the 3d of April, until the 1st day of Easter Term.

Seals, Pleas, Demurrers, Exceptions, Causes, Further Directions and Petitions, before the VICE-CHANCELLOR, after Hilary Term, 1833.

Thursday, February 7	{ THE FIRST SEAL—Motions.
Friday, - 8	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday, - 9	
Monday, - 11	
Tuesday, - 12	
Wednesday, - 13	
Thursday, - 14	{ SECOND SEAL—Motions.
Friday, - 15	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday, - 16	
Monday, - 18	
Tuesday, - 19	
Wednesday, - 20	
Thursday, - 21	{ THIRD SEAL—Motions.

Friday,	-	22	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday,	-	23	
Monday,	-	25	
Tuesday,	-	26	
Wednesday,	-	27	
Thursday,	-	28	FOURTH SEAL—Motions.
Friday,	March	1	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday,	-	2	
Monday,	-	4	
Tuesday,	-	5	
Wednesday,	-	6	
Thursday,	-	7	FIFTH SEAL—Motions.
Friday,	-	8	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday,	-	9	
Monday,	-	11	
Tuesday,	-	12	
Wednesday,	-	13	
Thursday,	-	14	SIXTH SEAL—Motions.
Friday,	-	15	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday,	-	16	
Monday,	-	18	
Tuesday,	-	19	
Wednesday,	-	20	
Thursday,	-	21	SEVENTH SEAL—Motions.
Friday,	-	22	Petitions.

In the interval between the last day of Hilary Term and the first Seal, the Vice Chancellor will sit at Lincoln's Inn to hear Motions.

The Court will not sit after Wednesday, the 3d April, until the first day of Easter Term

COMMON PLEAS SITTINGS.

After Hilary Term, 1833,

MIDDLESEX.		LONDON.
Common Juries.		Common Juries.
Friday . . . Feb. 1		Saturday . . . Feb. 2
Monday 4		Thursday 12
Tuesday 4		to
Wednesday 6		Tuesday 19
		(inclusive)
Special Juries.		Special Juries.
Thursday . . . Feb. 7		Wednesday . . Feb. 20
Friday 8		to
Saturday 9		Wednesday . . . 27
Monday 11		(inclusive).
		Common Juries.
		Thursday 28

The last day of the Sittings, pursuant to the Statute, will be Thursday the 28th February.

ANSWERS TO QUERIES.

State of Property and Conveyancing.

DEVISE. P. 211.

The word "Coparceners," is altogether inapplicable to a devise, inasmuch as coparceners always claim by descent, whether in coparcenary by the common law, or by the custom; and the word could only have been used through the ignorance of the testator; yet it may, in some respect, assist in determining what was the intention of the testator. From the use of the term "Coparceners," it may be inferred, I think, that he intended that his three children should take as tenants in common, tenancy in common being much more closely allied, in quality, to coparcenary, than joint tenancy, inasmuch as neither of the two former estates admits the very important and distinguishing characteristic of survivorship. The testator, in the next clause, directs "that the rents and profits should be equally shared between them, and if they should sell the same, that the monies arising from such sale, should in like manner be shared between them. Now where an estate is given to two or more persons, "equally to be divided" between them, though in deeds, it hath been said to be a joint-tenancy (1 Eq. Ca. Ab. 291); yet in wills it is certainly a tenancy in common (3 Rep. 39; 1 Ventr. 216, 227); as it may be presumed that the testator meant what would be most beneficial to each of the devisees respectively, though he did but imperfectly express his meaning. This is confirmed by the case of *Blissett v. Cranwell*, Salk. 226, where *Gould, J.* observes, that the words "equally divided," or "equally to be divided," make a tenancy in common in a will, beyond all dispute. The case of *Torret v. Frampton*, Styles, 434, is a very strong case in confirmation. Vid. 6 Cru. Dig. 672.

F.

VOLUNTARY CONVEYANCE. P. 211.

The conveyance to B. is void, as against A., although C. had notice of such conveyance at the time of his purchase from A. Sug. V. & P. 620, 6th ed., and the cases there cited.

A. B.

Practice.

SCIRE FACIAS AGAINST BAIL. P. 211.

In answer to your correspondent "P.," as to whether the writ of *scire facias* against bail is abolished by the 2 W. 4, c. 39, § 31. I find in Mr. Tidd's Treatise on that Act, p. 5, (where he states the cases to which the statute does not apply,) the following passage: "And a subject is not prohibited by the statute from suing out a *scire facias* to obtain execution on a judgment or recognizance."

Y. Z.

QUERIES.

State of Property and Conveyancing.

LEGAL ESTATE.

Release of freehold estates to *A.*, his heirs and assigns, to the use of *A.*, his executors, administrators, and assigns, for 500 years, for securing 18,000*l.* and subject thereto, to the use of *B.*, his heirs and assigns, in trust for *C.* his heirs and assigns. Upon purchase of part of the estates, it was agreed to merge the term as to that portion of it; and in order to do so, the conveyance ran in this way: *B.* released the premises to the purchaser in fee; and *A.* merged the term without joining in conveying the fee. As the legal estate was vested in *A.*, should he not have been a party in conveying the fee? and would his not being so prevent the merger of the term?

E. W.

WILL.—VOID CONDITION.

A. devised his mansion and estates to *B.* absolutely, but subject to the following proviso, that if *B.* entered or disturbed a certain apartment in the said mansion house, described, the devise to him of the same should be utterly void. *B.* being the heir at law of the testator, immediately on his death, and before the reading of the will, entered and disturbed the said apartment, not at that time being cognizant of the proviso. Is the estate and mansion forfeited by the infraction of the proviso? or is the same contrary to law, and therefore repugnant and absolutely void?

W. W.

MISCELLANEA.

HALF-HANGING.

The following is an instance of the recklessness with which the punishment of death is regarded by hardened criminals. One John Smith, was convicted of burglary in 1705. While he lay under sentence of death, he made but little preparation for it, buoying himself up with the hopes of a reprieve; but when he found himself disappointed, he was very much incensed against the persons who had undertaken to procure him one. When at the place of execution, he desired that all would take warning by his untimely death, which none but himself, by his sins, had brought about; and having performed the usual devotions at the tree, he was turned off, the 12th of December, 1705. After he had been hanging about a quarter of an hour, there was an outcry of a reprieve; upon which he was immediately cut down, and carried to a neighbouring house, where, being presently let blood, he recovered himself, and was taken back to Newgate. Being questioned concerning the sensations he experienced while hanging, he gave the following account:—That,

when he was turned off, he, for some time, was sensible of a very great pain, occasioned by the weight of his body, and felt his spirits in a strange commotion, violently pressing upwards; that, having forced their way to his head, he, as it were, saw a great blaze or glaring light, which seemed to go out at his eyes with a flash, and then he lost all sense of pain; that, after he was cut down, and began to recover himself, the blood and spirits having been spent, forcing themselves into their former channels, put him, by a sort of pricking or shooting, into such an intolerable pain, that he could have wished those hanged that had cut him down.

Notwithstanding this escape, he returned to his former practices, and was found guilty of breaking into a house or warehouse, as set forth in the indictment; but whether it was burglary, or in which of the places, the jury left to be determined by the judges. He continued in Newgate till Monday, Nov. 10, when he was brought to the bar, and by the opinion of the judges, on the special verdict recorded against him for breaking into the house of John Longuet, was acquitted. Another verdict was recorded against him for the same offence, in the name of John Cooper; but the prosecutor being dead, and nobody appearing against him, he had the unmerited good fortune to be acquitted.

THE EDITOR'S LETTER BOX.

In answer to our friend B. D., we believe, that since the decease of Mr. Bray, the senior member, or father of the solicitors, is Mr. Ryder of the Charter House.

C. D. should take the trouble to go to any of the Judges' Chambers, where he will see the forms of notice he requires.

We regret that, at the present busy season of the year, we are unable to find room for the amusing communication of G. G.

We do not think there is any reason for the apprehensions of one of our correspondents. An active, intelligent, and honorable, as well as numerous class of men, are indispensable for conducting the legal affairs of a country like Great Britain. The works he refers to are no sign of the downfall of a love of justice.

The Queries and Answers of J. L.; R. M.; J. G. B., I. N. K., and numerous others, as well as several Letters, are unavoidably deferred.

We thank C—n for his communication.

C. H. is informed, as we have frequently mentioned, that we cannot give the information he suggests oftener than *monthly*, until the newspaper duty be removed.

The *Conveyancing Notes* of our correspondent at Gainsborough are acceptable, and his friendly zeal gratefully acknowledged.

"A Barrister" will observe that we have availed ourselves of his communication, and thank him for his hint on another subject.

The Legal Observer.

Vol. V. SATURDAY, FEBRUARY 9, 1833. No. CXXIV.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

THE OPENING OF PARLIAMENT.

THE Parliamentary campaign has commenced, and we must now give our best attention to the various measures which are to be brought forward. The rumours which have been so rife during the last three months must soon be reduced to certainties. The speculations of the law reformers will soon appear in the substantial forms of bills and acts; and much that has been heretofore only talked about must become the law of the land. Among the many important matters to be deliberated on and settled by the present Parliament, law reform is certainly not that which most presses on the public attention; but even if Parliament were to confine itself to the business left undone under this head in the last sessions, it would, probably, find enough to do.

Church reform will doubtless engage a large portion of the time of the legislature; and we have long been prepared to admit, and have long advocated, an extensive alteration in the present mode of remunerating the Church, and distributing her property. Our duty and our inclination will also unite in assisting and furthering all measures for the reform of our laws, which can really effect any beneficial change; and if we wished for evidence of the patience and good feeling which our own profession shews under the knife of the innovator, we should not have to go very far back. The public should know, that the late changes in the practice and pleading of the Common Law

Courts have, as *our* readers are well aware, most materially interfered with the profits of many branches of the profession. Special pleaders have had to suffer a very severe loss: the junior members of the common law bar have been deprived almost entirely of their business in the Bail Court, and the greater part of their *motions*: and the attorneys have suffered even more severely. It is to the credit nevertheless of the profession, that they have allowed these changes to be made almost without a complaint. We have the means of knowing the real feelings of all classes of the profession, and we confess we have been surprised at the universal readiness which has been shewn to promote all useful changes in the present system, although their effect was in direct opposition to their own interests. It will be too much, therefore, if the old cry is attempted to be raised against the lawyers, that they will suffer no alteration in the law, affecting their own pockets.

The Local Court project is certainly to be brought forward, and many absurd notions respecting it have been circulated. According to some of them, the bill is already prepared, and will be immediately introduced: the Local Court is to be one of appeal, to which the business of quarter sessions is to be brought; it is to supersede the country commissioners of bankrupts and the circuits of the Insolvent Debtors' Court; it is to be evoked by a single *nisi prius* Judge, and unless thus called into existence, is to remain idle, &c. &c. We have good reason for thinking that nothing as yet is fixed respecting it, simply because the Re-

port of the Common Law Commissioners on the subject is not at present published.

The bills for effecting a reform in Chancery, and for effecting a separation of the judicial from the political functions of the Lord Chancellor, will, as we understand, be laid before the House more speedily. These we have very lately considered*.

The Fine and Recovery Bill, and the other measures recommended by the Real Property Commissioners (with the exception of the General Registry Bill) will be immediately introduced, and, as we stated some time ago, will most probably be made government measures. The General Registry Bill will be brought in as a separate measure.

Besides the Report of the Common Law Commissioners on the subject of Local Courts, we shall also soon be favored with that on the present state of Legal Education, and the Rights of Benchers as to calls to the Bar. The Real Property Commissioners are also ready with their Report on Wills, and another on Deeds. The Poor Law Commission will also soon give to the world the result of their labours. It is understood that they are in favour of one general right of settlement; but its nature is stated differently. By some it is said to be a settlement by birth, founded on a registration; and by others, a settlement by residence. It is evident that a change of this nature will greatly diminish the business at sessions; and here again the interests of the profession will be materially affected.

It is obvious, therefore, that Parliament has already plenty of work "cut out" for it; be it our endeavour to bring all that it shall perform, or be about to perform, before our readers.

GENERAL REGISTRY OF DEEDS IN IRELAND.

In order that our readers may be acquainted with whatever affects the General Registry Question, in any part of the United Kingdom, we subjoin a statement of the principal parts of the Act passed on the 4th of August last (2 & 3 W. 4. c. 87.), "to Regulate the Office for Registering Deeds, Conveyances, and Wills, in Ireland."

It recites, that some of the provisions of the last Act on this subject, 9 G. 4. c. 57, had been found *inconvenient*, and others occasioned an *unreasonable expense* to parties resorting for information to the Register

Office. The following clauses, among others, are therefore enacted:

That after the 31st of December, 1832, the present form of keeping the indices is to cease, and instead of numbering the memorials in one series from the establishment of the office, they shall be numbered in different series, of not more than three hundred in any one series (§§ 9 & 10).

The following, according to § 12, is to be the manner of keeping the abstract-book:

"That from and after the said thirty-first day of December, progressively as the said memorials shall be received in the said office, there shall be made and entered into a parchment book, to be called the 'Abstract Book,' an abstract or short statement of the effect of the instrument set forth in every such memorial, which abstract shall contain the year and day of registering, the volume and number of the memorial, the name of the instrument, the date of the instrument as given in the memorial, the names and descriptions of all the grantors and of one or more of the grantees, the consideration, the term, the rent, the renewal fines, the name and description of the premises, and the county and barony and parish wherein the premises are situated, the nature of the instrument, that is to say, whether a trust, marriage settlement, mortgage, or absolute or other conveyance, or such and so many of the foregoing particulars as are contained in the memorial of such instrument; and the abstract shall be entered in the abstract book in the form or to the effect of the model contained in the schedule distinguished by the letter (D.) to this act annexed; and the said abstracts shall be entered in the said abstract book in the same order that the first entries of the memorials to which they relate were made in the day book, and each abstract shall have prefixed to it the very same number as the memorial, and as the day book entry of the registration of the memorial, of which it is an abstract, shall have had put upon them; and the abstract books of each year shall be kept separate, and such books shall be divided into parts to correspond with the files and volumes of transcripts of such year; and there shall be one at least duplicate copy of such abstract book made, wherein the entries shall be continually kept up."

Then follows a provision as to transcribing the memorials and forming them into volumes.

§§ 14 & 15, relate to alphabetical indices of the persons and lands affected by the memorials, and are as follow:

"That previously to the said thirty-first day of December there shall be provided in the said register office a series of parchment books of sufficient size, which series of books shall be called the 'Index of Names,' and one book of the series shall be appropriated to the letter

* See 4 L. O. 343, 368, and *ante*, 229.

(A.), another book to the letter (B.), and so on through the alphabet; provided that any one such book may have a second or even a third unfrequently used letter assigned to it, at the discretion of the registrar; and upon the pages of every book in such series there shall, before the year in which it is to be used begins, be distributed an alphabet with the letters of a second alphabet to each letter, in the following manner; (that is to say,) the letters A A at the head of a page at the beginning of a book, A B at the head of a page next to or not more than a few pages subsequent to the page in which the two former letters were inserted, and so on throughout a whole alphabet preceded by the letter (A.); then B A, and to the end of a second alphabet; then C A, and following the like course until every letter of the alphabet, thus repeated with a consecutive letter of a second alphabet, shall have been inserted, each as the head of a separate page of the book; provided that any one or more of such combinations of letters, of which no example of a name beginning with such letters had occurred in the said register office, may, at the discretion of the registrar, be omitted; into which book there shall be entered, by and under the two first letters of the name, the surname, and if ennobled, the title of honour, of the grantor in every memorial registered in the office; and to the said surname of the grantor there shall be subjoined the Christian name of such grantor, and also the surname and the Christian name of the grantee, followed, where there shall be more than one grantee, by the words 'and another,' or the words 'and others,' as the case may be, and also the first denomination of the lands, and the names of the county and barony, or of the city or town being a county of itself, and parish, wherein the lands affected by the instrument of which the memorial is registered is situated, and the year of registration, the respective numbers of the abstract and transcript books in which the memorial shall have been entered, and the number and file of the memorial; and where there shall be more than one grantor there shall be subjoined to the name of the first grantor the words 'and another,' or, as the case may be, the words 'and others;' and the name of the second grantor shall form a second head of entry in the said index, and be followed by like words; and such last-mentioned entry shall be accompanied with the like particulars as last aforesaid; and where there shall be a third grantor, or any greater number of grantors, then in either of the said cases there shall also be a further like entry under the name of such third and every other grantor; and all such entries shall be made and completed before the time of opening the office for business on the morning next but two after the day on which such memorial shall have been delivered into the office for registry; and the series of books last aforesaid shall be continued three years, and the entries in that series shall then be closed, and a new series in a new set of books shall be begun; and this second series of books shall be continued four years, and the

entries in that series shall then be closed, and a new series in a new set of books shall be begun in like manner; (that is to say,) the first or triennial series of current indexes shall continue to the end of the thirty-first day of December one thousand eight hundred and thirty-five; and the second or quadrennial series shall commence with the first day of January one thousand eight hundred and thirty-six, and shall end with the thirty-first day of December one thousand eight hundred and thirty-nine; and the next or quinquennial series shall begin with the first day of January one thousand eight hundred and forty, and shall continue to the end of the thirty-first day of December one thousand eight hundred and forty-four; and so in like manner shall each subsequent series contain five years and no more.

"That as soon as the second series of such indexes shall be closed, the first and second of such indexes shall forthwith be consolidated into one index, in alphabetical order, under one alphabet, and also one or more duplicates of such index shall be forthwith made; and as soon as a fourth series shall be closed, the third and fourth series shall be consolidated into one decennial index, and one or more duplicates be made thereof; and in like manner in all time to come every two quinquennial current indexes shall be reduced into a decennial index, with one or more duplicates thereof."

A duplicate copy of the index of names is to be made for the use of the office; and then follows a provision for an *index of lands*.

"That previously to the said thirty-first day of December, there shall be provided in the said office another series of sufficiently large parchment books, to be called the 'Index of Lands;' and one book of such series shall be appropriated to each county, and one to each city being a county of itself, and one book to every such number of towns, being counties of themselves, as heretofore it has been customary to index together, and one book to every such number of other towns as heretofore it has been customary to index apart from the counties in which they are situated; and every book appropriated to a county shall be divided into baronies, and every book appropriated to a city, being a county of itself, or to a number of towns, shall be divided into parishes or streets; and each such book for counties shall contain separate divisions under the heads of baronies, and for cities or towns under the heads of parishes or streets, arranged alphabetically, with alphabetical subdivisions for denomination of lands; into which books there shall be entered, by the initial letter of each name, the names of all lands, tenements, and hereditaments specified in every memorial registered in the office, and to the name of the land, tenement, or hereditament there shall be subjoined the name of the parish or the place respectively in which the same shall be described to be situated, and also the year of registry, and the page of the day book, and the

number and volume respectively of the abstract and transcript books, and the number and file of the memorial relating thereto."

These indices of lands are also to be kept in periods of five years; to be consolidated decennially; and a duplicate for use kept in the office.

The forms of requisition for search, and certificates that no memorial has been found of the deeds mentioned in the requisition, are next specified. These and other details we defer for the present.

PLEASANTRIES OF THE LAW.

No. VI.

A Danish writer assures his readers that the taste for hanging is so prevalent in England, that criminals, who are to be hanged, go laughing and singing to the gallows, and, in the absence of the executioner, hang themselves. "*Ad loca supplicii non ducuntur Angli, sed currunt, ridendoque cantando, facetiis spargendo, et circumstantibus insultando moriuntur; ubi desunt carnifices se ipsos saepe suspendunt.*" Holbergii Opuscula, tom. 2, 118.

When Lord Coke was presented by Lord Bacon with a copy of the *Novum Organum*, with the title of *Instauratio Magna*, he wrote under the hand-writing of Bacon,

"Auctori consilium.

Instaurare paras veterum documenta sophorum

Instaura legis justitiam que prius."

And over the device of the ship passing under the pillars of Hercules,

"It deserveth not to be read in schools,
But to be freighted in the ship of fools."

In the time of Alfred he ordained, that all false Judges, after forfeiting their possessions, should be delivered over to false Lucifer, so low that they should never return again; that their bodies should be banished and punished at the King's pleasure; and that for a mortal false judgment they should be hanged as other murderers. And he gives a list of the Judges executed by the King's order. In one year, we are told, that forty-four Judges were hanged. He hanged Cole, because he judged Ivo to death when he was a madman. He hanged Athelf, because he caused Copping to be hanged before the age of twenty-one years. He hanged Diling, because he caused Eldon to be hanged, who killed a man by misfortune.

He hanged Horne, because he hanged Simon at days forbidden. But not only did Alfred hang for hanging; he maimed his Judges for not maiming their prisoners. Thus he cut off the hand of Hanlf, because he saved Armock's hand, who was attainted before him, for that he had feloniously wounded Richbold. And he judged Edolf to be wounded, who feloniously had wounded Aldens. Mirror, c. 5; and see 3 Inst.

The following is the first bill ever filed in Chancery:

"A tres reverent pier en Dieu, lercevesque Deverwyk, Chaunceller d'Engleterre monstre Thomas Duc de Gloucestr que comme per enquest pris devant l'eschetour n're Sr. le Roy en le countee de Salop per brief de diem clausit extremum apres le mort Thomas nedgers Count de Stafford, trove soit per meme l'enqueste que le dit nedgers Count morast seise en son demesne come de fee entre autres terres et tenz en mesme le countee d'une me'es et certains autres t'res ove les app'tenances en la ville de Bruggenorth en le dit countee, la garde de quelles t'res en tenz entre autres t'res et tenz queur furent a dit nadgers Count feut comys a le dit Duc, a avoir sur certain forme come en les lettres patentes n're dit Sr. le Roy ent faites a dit Duc plus pleinement est contenuz et ensi soit que Thomas Othale ovesque plusieurs autres gentz soit entrez en les ditz me'es t'res et tenz en la dite ville sur la possession n're dit Sr. le Roi; dont please a v're sage discrecion considerer la matiere susdite et grantier brief directez a dit Thomas Othale pur estre devant vous en la Chauncellaire n're dit Sr. le Roi a les octaves de la Trinite p'chien avenir sous peine de C li. per respondre des choses susdites faites en contempt n're dit Sr. le Roi."

Indorsed "Crastino Joh'es Bap'te."

Of which the following is a translation:

"To the very Reverend Father in God the Archbishop of York, Chancellor of England, sheweth Thomas Duke of Gloucester; That, whereas by an inquest taken before the Escheator of our Lord the King in the county of Salop, by writ of *diem clausit extremum*, after the death of Thomas late Earl of Stafford, it was found by the same inquest that the said late Earl died seised in demesne as of fee, among other lands and tenements in the said county, of a messuage and certain other lands and tenements with the appurtenances, in the town of Bridge-

north, in the said county, the custody of which lands and tenements, among other lands and tenements, which were of the said late Earl, was committed to the said Duke, to have under a certain form, as in the letters patent of our said Lord the King, thereupon made to the said Duke, is more fully contained. And so it is that Thomas Othale, with divers other persons, have entered into the said lands and tenements in the said town, on the possession of our said Lord the King. Wherefore may it please your sage discretion to consider the matter aforesaid, and to grant a writ directed to the said Thomas Othale, for to be before you in the Chancery of our said Lord the King, at the Octaves of the Trinity next coming, under the penalty of 100*l.*, to answer the matters aforesaid, done in contempt of our said Lord the King."—See *A Calendar of Proceedings in Chancery*, printed in 1827.

† * †

LAW REFORM IN INDIA.

In the Parliamentary Report just printed, of the Select Committee on the Affairs of the East India Company, there are some passages on the state of the Law in our Indian possessions, and the necessity of reform, which we consider it useful to extract. They are as follow :

There exist in India, at the present time, two concurrent, and in some instances conflicting, systems of judicature,—the *Company's* Courts, and the *King's*, or Supreme Courts.

In the *Company's* Courts there are three grades of European judges,—the *district*, the *provincial*, and the judges of the *Sudder Court*. Of the native judges there are two classes : *Moonsiffs*, of whom there are several stationed in the interior of every district; and *Sudder Amrans*, established at the same station with the European District Judge. There are also magistrates, who exercise civil jurisdiction under special appointment. The registrars try and decide such causes as may be referred to them by the judge.

The jurisdiction of the supreme Court extends to Europeans generally, and within a certain limit round the several presidencies, to natives also ; but constructively, natives not so circumstanced have on many occasions been brought within its jurisdiction. The jury system is confined entirely within the limits of the supreme Court.

It is made ground of complaint, that the criminal law is more severe than that administered

beyond this boundary, while the civil law also is attended with an expense which has ruined most of the native families of distinction, and borne heavily upon Europeans.

No regulation made by the local government, and affecting individuals within the jurisdiction of the Court, is valid, unless registered by the Court; a power which has in recent instances been freely exercised, and much beyond the local limits contemplated by the act of parliament.

Hence collision has arisen between the local authorities and the functionaries of the King's Courts, which has proved a source of great evil, and of serious embarrassment to the government; nevertheless, objections exist to the abolition of the Courts; while the remedies necessary to correct the evils attached to the operation of the present system are said to be abundantly obvious :

1st, By accurately and strictly defining the jurisdiction of the Supreme Court; or,

2dly, By the establishment of a general Legislative Council; or,

3dly, By the appointment of local agents, with the control of districts, as suggested by Sir Thomas Munro.

The power of arbitrary *deportation* upon alleged charges, without trial, forms another important feature in the local administration of India, concerning which it has become a question, whether it might not be suppressed or modified by the introduction of trial by jury, without danger to the state.

There is also important evidence, with regard to the code of criminal law in force in the Provincial Courts; the reciprocal circumstances of Europeans and natives, with respect to the administration of justice; the effects and tendency of the judicial system actually in operation, as to the security of the persons and property of the natives; and the expediency of subjecting Englishmen to the jurisdiction of the provincial tribunals.

On a large view of the state of Indian legislation, and of the improvement of which it is susceptible, it is recognised as an indisputable principle, that the interests of the native subjects are to be consulted in preference to those of Europeans, whenever the two come in competition; and that, therefore, the laws ought to be adapted rather to the feelings and habits of the natives than to those of Europeans.

It is also asserted, that though the native law might beneficially be assimilated to British law in certain points, yet that the simple principle of British law could never be made the basis of an Indian code; and finally, that the rights of the natives can never be effectually secured, otherwise than by such an amalgamation; by the appointment of a European Judge to every Zillah Court, with native judges as his assistants and assessors; and by the substitution of individual for collective agency.

RULES AND PRIVILEGES OF PARLIAMENT.

No. II.

To the Editor of the Legal Observer.

Sir,

I BEG to offer you a few more notes of my parliamentary reading. They might very properly, to borrow a happy term from one of your correspondents, be called "Pleasantries of Hattell." I take them as they come, without method.

Hear ye the opinion of the Judges on privilege of parliament in the reign of Hen. VI.—It was declared in the famous case of Thorpe. Thorpe was condemned in execution at the suit of the Duke of York, *after* the commencement of the privilege, and committed to the Fleet. The lords spiritual and temporal "opened and declared to the justicez the premisses, and axed of theym whether the seid Thomas (Thorpe) ought to be delivered from prison, by force and vertue of the privilegge of parliament, or noo? To the which question the chief justicez in the name of all the justicez, after sadde communication and mature deliberation hadde amonge them, aunswere and said, 'That they ought not to aunswere to that question, for it hath not been used aforetyme, that the justicez shuld in eny wyse determine the privilegge of this *High Court of Parlement*; for it is so high and so mighty in his nature, *that it may make lawe*, and that that is lawe it may make noo lawe; and the determination and knowlegge of that privilegge belongeth to the Lordes of the Parlement, and not to the justicez.'

By the bye, I have it well imprinted on my memory how high and mighty "in his nature" the privilege of parliament is. A few years ago, I (professionally) commenced an action against the Warden of the Fleet Prison for an escape, in suffering an individual, chosen a member, but who was in custody, in execution, at and long before the time of his election, to go at large, in pursuance of an order of the House of Commons. I thought (and the present learned Lord Chief Justice of the Common Pleas thought so too) the law was, that under these circumstances the House had no right to liberate the prisoner; but the House said, that was "noo lawe:" and so we lost our debt and expenses, and had to pay the piper (that is the Warden) into the bargain.

On the 4th of June, 1621, the House was informed of Johnson, Sir James Whitlock's man, being arrested. The parties were immediately called to the bar, and heard, on their knees, in their defence. It was ordered thus: "That they shall both ride upon one horse, hare-backed, back to back, from Westminster to the Exchange, with papers on their breasts with this inscription: 'For arresting a servant to a member of the Commons' House of Parliament;' and this to be done presently, *sedente curia*." And this their judgment was pronounced by Mr. Speaker to them, at the bar, accordingly.

Sir John Eliot's case is to be found in Croke's Reports: therefore I shall say nothing of it here further than that, according to the report, the information stated, that "Sir John Eliot, machinans et intendens omnibus viis et modis seminare et exitare, discord, evil-will, murmurings, and seditions, as well versus Regem, magnates, prelatos, proceres, et justiciarios, et reliquos subditos Regis, et totaliter depri-vare et avertere regimen et gubernationem regni Angliæ, tam in Domino Rege, quam in consiliariis et ministris suis cujuscumque generis, et introducere tumultum et confusionem," &c. &c.

In 1623, it was resolved, "That the election of Mr. Stewart," (a Scotchman,) "being no natural born subject, is void."

Formerly very young persons were allowed to sit as members in the House of Commons. In the reign of James the First, there were at one time forty gentlemen under twenty, and some of them not exceeding sixteen, who sat as members.

On the 7th of March, 1676, Serjeant Maynard was sent for, in custody of the Serjeant at Arms, for going the circuit without leave of the House. Is it the practice of our learned brothers now to ask such leave? or do they take French leave?

By 6 Hen. 8. c. 16, every member who absents himself, without licence recorded, shall lose his wages. To be sure a member gets no wages now; though the candidate works as hard for election as if he were struggling for a good place.

A member may speak from the gallery; but he must have a seat, and not speak in the passage ways, or from behind the clock.

After the House has been counted, the tellers go up from the bar to the table, those who have told on the part of the majority taking the right hand; and one of these (all making their obeysances to the chair) makes report of the numbers to the Speaker. If the numbers on the division should be equal, and the tellers should go up in this manner, the Speaker would send them to the bar again, and direct them to come up to the table *mixed*.

A motion for enforcing a standing order of the House need not be seconded. Therefore it is, that any single member can at any time have the House cleared of strangers, or the lobby cleared of footmen, or have the House counted, and that in the midst of a debate, however inconvenient the operation may be; for in these cases the member does not properly make any motion, but only takes notice that the orders of the House are disobeyed.

As I have exhausted all I had to communicate, I beg to observe, in conclusion, that however frivolous some instances of etiquette in the proceedings of the House, when looked at by themselves, may appear, every thinking man must perceive, that it is of high importance all the proceedings of a body, the main branch of the legislature, should be conducted with uniformity and precision, for the prevention of mistakes and misapprehension, and for

the preservation of coolness, and the avoiding of hurry and confusion.

I am, Mr. Editor, yours,
ARCHIBALD ROSSER.

Great Ormond Street.

SELECTIONS
FROM CORRESPONDENCE.
No. XIX.

EXAMINATION OF ATTORNEYS.

Sir,

THE remarks made by your correspondent S., with regard to the examination of persons who apply for admission as attorneys, as to the general character which they bear for honesty and good principle, are certainly just and forcible; but yet I cannot agree with him, that honesty alone is a sufficient qualification for a candidate for any profession. Though it is certainly material and most essential for those to possess it who have at their command the lives and properties of others, yet on their skill and knowledge depends the good or bad care and direction of them. The examination of attorneys would materially raise the standard, the respectability, and the ability of the profession; for none would apply for admission who were not aware that they had sufficient intellectual capacities to pass the requisite ordeal; and if any did offer themselves, who, from a deficiency of talent, idleness, or neglect of study, were not qualified for its duties, they would be rejected. The abilities and knowledge of attorneys would therefore be raised to a higher standard than they can at present possess,—there would necessarily arise more confidence between them and their clients,—more reliance upon the judgment of the former,—more beneficial preservation of the property of the latter.

It is indeed generally allowed, that the benefit which would result from an examination would be great; but it is objected to the practicability of the system, that the law of this kingdom is so extensive that it is impossible that any man of five years education in its various branches should be sufficiently read to undergo an examination; and the vast number of instances which daily occur, of men obtaining admission into the profession who are incapable, from ignorance, of acting as attorneys should conduct themselves, seem to bear out this assertion. But it must be recollected, that young men are articulated as soon as they escape the trammels of school,—having no particular object to excite them to study, except the indefinite, and seldom acknowledged one, that it would be for their own benefit in after life, they waste their time in indulging in the liberty which they have anticipated from their boyhood, and weaken the mind by useless amusements and occupations. To this cause, and to the grievous neglect of the attorneys, under whose care clerks are generally placed, may be attributed the general ignorance of those who apply for admission. Frequent instances

occur of an attorney with two articulated clerks, who, during the whole term for which they are bound, receive only that imperfect instruction which copying drafts can impart, and never hear of the theory and principles (the soul as it were of law, on which all its other parts depend), or the foundations of English jurisprudence.

Let, therefore, a spirit of emulation be infused amongst the students, and let it be understood that they must gain a certain degree of knowledge before they can be admitted into the profession, and they will attain it. The advantage I have named will then be a necessary consequence.

The system of examination I should recommend, would be simply this:—Let there be certain days appointed for general examinations; let certain subjects be given for essays, which should be written in the room; let each student draw a draft of a conveyance, with fictitious parties and circumstances, as shall be named, and let each assign his reasons for the covenants which he has introduced. Let, also, a *viva voce* examination be given on points connected with the common law, as modes of commencing and proceeding with personal actions in the different Courts; replies on which subjects would be sufficient to shew whether the student has, or has not, a general acquaintance of the principles of the science which he professes to practise.

As to the assertion of your correspondent S., that there is no danger to be apprehended from fools, because no one will employ them; it must be recollected, that it is not until a client has woefully suffered from the mismanagement of his lawyer, that he discovers him to be ignorant of the principles of his profession.

I am, Sir,

Your obedient servant,

H. C. T.

Taunton, Jan. 21st, 1833.

ENTRIES ON THE ROLL.

To the Editor of the Legal Observer.

Sir,

By the 1st of the Rules of H. T., 2 W. 4, for rendering uniform the practice of the Courts, it is directed, that "warrants of attorney to prosecute or defend shall not be entered on distinct rolls, but on the top of the issue roll." Ever since the Rule of E. T., 4 Jac. 2., K. B., it has been the practice of the Court of King's Bench to enter the warrants of attorney to prosecute or defend, not only on the issue roll, but on the judgment roll, when the judgment has been by confession or default.

The officers of the Court of Common Pleas, notwithstanding the practice of the King's Bench for nearly 150 years, and the recital in the Rule of H. T., 2 W. 4., that "it is expedient that the practice of the Courts of King's Bench, Common Pleas, and Exchequer of Pleas, should as far as possible be rendered uniform," have determined not to allow and judgment by confession or default to be signed,

unless the warrants of attorney are entered on distinct rolls; contending, that as the Rule mentions only "the *issue* roll," it can apply to issue rolls, and to them alone.

It may be said that this is a matter of no very great importance; but if the Rules of the Courts are to be disregarded in these particulars, instead of the practice of the Courts being rendered uniform, it will be more dissimilar than ever. E. H.

HINTS ON CONVEYANCING PRACTICE.

THE laws of real property participate, in all kingdoms, of the unpolished and rude characters of the times when they were founded, and ultimately arrive, by many decisions and legislative enactments, to such perplexity, that the legal student, to understand them in all their many evolutions, must apply much labour, and studious and diligent research. The following observations on the investigation of a title, have come under my especial cognizance; and I submit them in aid of the student in his laborious career, and as a refresher to the memory of the more experienced lawyer.

I may first observe (although the points are sufficiently obvious), that the requisite parts to be attended to in abstracts are, the conveying parties, recitals, parcels, uses and trusts, and the limitations thereof—covenants, and particularly the exceptions therein—the execution and receipt, not forgetting any endorsements written thereon.

The dates of deeds, and more especially of wills, should always be attended to, as a conveyance made after a will is a revocation of the same. The title should be shewn for sixty years back, because a possession for sixty years, by the Statute of Limitations, bars all other rights; but it must not be understood, that if a right of action should arise, not barred by the statute, that sixty years is a bar.

If an abstract begin with a conveyance from a person as heir at law of his ancestor, a purchaser may require proof of that ancestor's intestacy, and the want of the same is an objection to the title. If a man have deeds prior to sixty years, he may destroy, before the contract, those prior to sixty years. But care should be taken that he retains a title and deeds for sixty years.

State every recital relating to the premises not referred to in the abstract; for

after the lapse of forty years, the truth of recitals may be relied on by a purchaser. In the parcels the old description is the substantial part, the new explanatory. A title is not marketable which depends on the destruction of contingent remainders, because it is always liable to be disputed, and the remainders very possibly supported by an outstanding legal estate.

A title depending on a feoffment and fine, I always would object to, as unmarketable; and where a purchase by a trustee of the trust estate is shewn, the title is radically bad: so is a title depending on a fine and nonchaim alone. A devisee, not being the heir at law of the testator, taking under a will attested by only two witnesses, having made a feoffment and levied a fine with proclamations, I conceive to have a marketable title. A doubtful title occurs, where a testator, subsequently to the making of his will, levies a fine, suffers a recovery, or in any other manner revokes his will, and the property goes according to the devise, without the revocation being discovered; but even in this case a purchaser may take the title with a fine.

The same rules are applied to copyholds as to freeholds, with respect to the various degrees of goodness and security of title.

As to leaseholds, it is very different. A clear adverse possession of twenty years (which, of course, is a bar under the Statute of Limitations,) will confer a title; but the original lease, in this case, must be produced, as also the lessor's title, and all mesne assignments, unless particularly excepted by the conditions of sale.

J. J.

LAWS OF FRANCE.

MINISTERS OF JUSTICE AND STATE OF CRIME.

FRANCE is divided into *Departemens*, *Arrondissemens*, and *Communes*. The following account of the judicial officers of each of these divisions, and of the state of crime, is abridged from Mr. Okey's Digest.

Each *département* includes a *préfet*, a *conseil de préfecture*, a *conseil général de département*, a court of assize, and as many tribunals of *première instance* as there are *arrondissemens communaux* in the *département*. In each *arrondissement communal*, excepting in that

which includes the chief place of the *département*, there is a *sous-préfet*, with a *conseil d'arrondissement*: the *arrondissements* in each *département* vary from three to six in number, each having its principal town, or *chef-lieu*, as well as the *département*. The *arrondissements* are, in their turn, divided into *cantons*, which are the seats of justices of the peace. Each *canton* again includes a certain number of *communes*, or assemblies of inhabitants united for their common interest, the *communes* being under the direction of a mayor and an *adjoint* or assistant.

In cities or towns containing 2,500 to 5,000 inhabitants, there is a mayor and two *adjoints*; in those containing 5,000 to 10,000 inhabitants, a mayor, two *adjoints*, and a commissary of police; and in cities the population of which exceeds 10,000 inhabitants, there is, exclusive of the mayor, two *adjoints* and a commissary of police, an *adjoint* for every 20,000, and a commissary for every 10,000 inhabitants. In Paris each *arrondissement* has a mayor and a *juge de paix*, and in each *quartier* there is a commissary of police.

The *préfet* is a public officer having the direction of the *département*; to him is intrusted the management of the police; and it is his duty, either personally or by his officers, to inquire into, examine, and prepare all the necessary documents for establishing proof of the commission of crimes, misdemeanors, and offences which happen within his *département*: these he forwards to the *procureur du roi*, and delivers over the accused to the tribunal before which he is to be tried. In the event of illness, or other disability, the *préfet* is replaced in his duties by the officer who succeeds him in rank.

The *sous-préfet* is the public officer having charge of the *arrondissement*, for which he is responsible to the *préfet*.

The mayor is a public officer having the direction of a *commune*, and exercising his authority under the superintendence of the *sous-préfet* of the *arrondissement*.

The justices of peace (*les juges de paix*) preside judicially over the *cantons*.

The commissary of police is the officer intrusted with the charge and maintenance of the police laws: these, or in *communes* where there are no commissaries of police, the mayor, and in the absence of the mayor, the *adjoint* of the mayor, investigate all offences against the police regulations, receive and hear complaints relating thereto, and set out in the *procès-verbaux* which they prepare on the subject, and forward to the proper authorities, the nature of the offence, the circumstances attending it, the time and place where it was committed, with the evidence or presumption arising against the party accused.

The proportion of crime to the population of France, is found to be as one conviction for a capital offence to about each 1797 inhabitants; a fact highly creditable to the police of France.

The proportion of acquittals and convictions to the number of persons accused is:—

<i>Acquitted.</i>			
Of offences against the person	-	-	5
Against property	-	-	31
			— 36
<i>Convicted and sentenced to infamous punishment.</i>			
Of offences against the person	-	-	3
Property	-	-	42
			— 45
<i>Sentenced to correctional punishment.</i>			
For offences against the person	-	-	1
Property	-	-	18
			— 19
			— 64
			— 100

SUPERIOR COURTS.

Court of Chancery.

INSOLVENT ACT.—PROVISIONAL ASSIGNEE.—PLEADING.

The Provisional Assignee, under the General Insolvent Act (7 G. 4, c. 57) was co-defendant in a suit in Equity, and was removed, and another person appointed provisional assignee: Held, that the name of the new assignee could not, upon motion, be substituted in place of the former as defendant.

Sir Edward Sugden moved for the reversal of an order made by the Vice Chancellor, by which his Honor directed that the name of Mr. Samuel Sturgis, the present Provisional Assignee of the Insolvent Debtors' Court, be substituted for that of Mr. Henry Dance, the late Provisional Assignee, as defendant in a suit in this Court. Mr. Dance had been made co-defendant in the suit, put in his answer to the bill, and made his defence; but being since removed from his office, it was sought by the application to his Honor, to substitute the name of his successor in office for his, upon mere motion, and to compel him to adopt the defence of his predecessor, with all its imperfections, and without allowing him to make a defence of his own. It was necessary, in arguing and deciding this motion, to refer to several sections of the act 7 G. 4, c. 57, for the relief of Insolvent Debtors. By the 16th section (the first part of which authorises the provisional assignee to take possession of and sell the estate and effects of the prisoner, &c.), it is enacted, that it shall be lawful for the provisional assignee to *sue* in his own name for recovering and enforcing debts, effects, or rights of such prisoner; and all the estate or effects vested in such provisional assignee shall not remain in him, if he resign or be removed from office, nor in his heirs, executors, or administrators, in case of his death, but shall go to and vest in his successor in office." That section authorized the provisional assignee to

sue—that is, to be plaintiff in a suit, but did not import that he was to be a defendant. The 19th and 20th sections related to the appointment of common assignees, the assignment to them by the provisional assignee, their power of sale and surrender, &c.; and *such* assignee or assignees are, by the 24th section empowered to *sue*, &c., to give discharges, &c.; to make compositions, &c., and to submit to arbitration, &c.—provided no such composition or submission to arbitration shall be made, nor any *suit in equity* shall be *commenced* by *such* assignee or assignees, &c. By the 26th section, on which the Vice Chancellor made his order, which was now sought to be reversed, it is enacted that “whenever *such* assignee or assignees shall die or be removed, or new assignee or assignees be appointed, no action at law or suit in equity shall be thereby abated, but the Court in which any action or suit is depending, may, upon the suggestion of such death or removal, and new appointment, allow the name or names of the surviving or new assignee or assignees to be substituted in place of the former, and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he or they had originally commenced the same. He contended that this section, as well as the 19th, 20th, and 24th, applied, not to the provisional, but to the common assignees—the assignees of the creditors,—and applied to them as plaintiffs, and not as defendants, as was evident from the words “to *sue*,” “*commenced*,” and “*prosecuted*,” which could not be predicated of a defendant. After reading the 38th and 39th, and other sections of the act, in support of his argument, he cited the case of *Bainbridge v. Blair and others*, 1 Younge’s Rep. 386, in which Lord Lyndhurst, Chief Baron, decided that the act nowhere contemplated the provisional assignee as a defendant. In the report of that case a contrary decision of the Vice Chancellor was referred to.

Mr. *Reynolds*, on the same side, urged the hardship upon the new provisional assignee, of being thus, upon motion, placed upon the record, without having an opportunity of making his own defence to the suit. He may have a better defence to make than was made by his predecessor. He should be made defendant by supplemental bill, and not upon motion.

Mr. *Girdlestone*, sen., supported the order of the Vice Chancellor, who made several such orders upon full consideration of the act. He knew that there were many cases in which the provisional assignee was substituted plaintiff, without application to this Court, because of the small sums in dispute, and of the expense of such application. He submitted that the clauses referred to on the other side applied to the provisional, as well as to the other assignees, and that there were only three or four words in the whole act which threw a doubt upon the reasonable construction of it,—which was, that such assignee may be a defendant as well as plaintiff. By the 26th section it is enacted, “that no action at law or suit in equity shall be abated by the death or removal of

any assignee; but the Court in which such action or suit is pending, may, on the suggestion of such death or removal, or new appointment, allow the name of the successor to be substituted.” It was to avoid expense in these suits, where the matter in dispute is of small value, that it was desirable to substitute the new assignee as defendant, in place of the former, by motion, rather than incur the expense and delay of a supplemental bill.

The Lord Chancellor, having looked into the act, said, it struck him very forcibly that the word “*such*” (assignee) in the beginning of the 26th section, referred to the last antecedent, which was the assignee of the creditors. The case was of great importance, and he would take time to consider it.

His Lordship, on Tuesday the 29th of January, gave his judgment. He examined all the sections of the act which had been referred to in the argument, and gave it as his opinion that the name of the provisional assignee could not, upon motion, be substituted for the former assignee, as defendant: it may, of course, be done by supplemental bill, or bill of revivor. He therefore reversed his Honor’s order. *Mendham v. Robinson and Dance*, Westminster, Hilary Term, before the Lord Chan.

Rolls Court.

NEXT OF KIN.—DECREE ON AN ADMINISTRATION SUIT.

An intestate’s estate is distributed under a decree in an administration suit, among those who came and shewed they were the next of kin. A person admitted to be the true next of kin, files a bill against them, to account for and refund their shares of the estate: Held, that such person is not precluded by the former decree, but may prove title before the Master, who is to report thereon, and state special circumstances.

The bill in this case, which is one of first impression, was filed by Mary David, as next of kin of David Williams, who died intestate in January, 1828, leaving property, consisting of personalty to the value of between 4000*l.* and 5000*l.* in Glamorganshire, against the parties to a suit which had been instituted for administering the intestate’s estate. In that suit, some of the present defendants claimed to be next of kin to the intestate, and the whole of his property, under a decree of the Court, was actually distributed among them. The object of the present suit was to obtain a decree for refunding the estate so distributed, upon the grounds of fraud and surprise on the plaintiff. The bill stated, among other things, that the plaintiff was sole next of kin to the intestate; that he was ninety years of age, unable to read or write; that she had resided all her life in Glamorganshire, in a parish adjoining to that where the intestate resided, and being in poor circumstances, was in the habit of receiving small sums from him occasionally, and was now

receiving parish relief.. The plaintiff further stated, that upon the decease of the intestate, she, not then knowing in what degree exactly she was related to the intestate, caused application to be made to an attorney, to ascertain whether she had any, and what claim on the estate of the intestate; but those applications had no result. From the further statements in the bill, and from the explanations of counsel, it appeared that on the 21st February, immediately after intestate's decease, Mr. Frowd, one of the defendants, a solicitor in London, considering his wife to be of the next of kin to the intestate, procured letters of administration of the estate to be granted to him. A bill was filed on the next day by Emma Church, sister of Mrs. Frowd, two other defendants in the suit, for the purpose of administering the intestate's estate; and on the 29th of the same month, the common decree in an administration suit was made. The Master, by his report, dated in May 1829, certified, that he caused the usual advertisements to be inserted in the London Gazette, and several London and provincial newspapers, for creditors, next of kin, &c.; and that no creditors came in, and that Mrs. Frowd, Emma Church, and others therein named, were the next of kin of the intestate. The report was confirmed, and the estate was collected and distributed under the direction of the Court, among the next of kin, named in the report. The plaintiff remained all the time in ignorance of those proceedings; as soon as she came to the knowledge of them, she instituted this suit against Mrs. Frowd and all the others who shared in the distribution of the intestate's estate; and the question now argued was, whether, supposing the plaintiff's title as next of kin to the intestate to be indisputable, and laying out of consideration all the suggestions of fraud in the bill,—whether the plaintiff was concluded by the former decree from claiming against the defendants, among whom the estate was distributed under that decree.

Mr. Pemberton and Mr. Lynch for the plaintiff.—The state of facts was not brought fully before the Court, before the decree was made in the former suit, and that decree was erroneous. Although it may be a hardship upon persons who have received a distributive share of an estate in an administration suit, to be obliged to refund the money, it would be a far greater hardship upon the party, legally entitled, to be precluded from establishing her title, there being no *laches* on her part. This plaintiff's right was like that of a creditor, who was let in to prove, and be paid a debt out of legacies already appointed, but remaining by accident in Court, and admitted to file a bill against other legatees, who received their legacies under a decree of the Court. If a creditor do not come in till after the executor has paid away the residue, he is not without remedy, although he is barred the benefit of that decree. If he has a mind to sue the legatees, and bring back the fund, he may do so by suit. *Gillaspie v. Alexander*, 3 Russ. 130—136; and *Grey v. Somerville*, 1 Russ. & Myl. 338.

Messrs. Agar, Bickersteth, Parker, Stirton, and Neale, for different defendants, distinguished this case from those cited. There was no analogy between them; for the creditor had a superior and legal title, as against the legatee; whereas the plaintiff here had only an equitable title against parties who had equal equities, and had also a claim of diligence. This being a case of first impression, the Court would be slow in establishing so dangerous a precedent, as that a party after receiving money under the solemn decree of the Court, should be bound to refund it, as soon as another party who had neglected to prosecute her claim should prefer a prior title. Admitting that this was a case of hardship, and an unfortunate case, still they submitted that public policy required a limit to be put to litigation, and there would be no limit if a party thus coming were allowed to undo all that the Court had done.

The Master of the Rolls said, the case was one as clear in principle, and as well established by analogous precedents, as any case that ever came before him. The personal estate of an intestate is liable in the first place to the claims of the creditors, and what remains after the payment of creditors, is distributable among the next of kin. The administrator of an estate may not know who the creditors are; he may be ignorant of the extent of the debts; he may not know who are the next of kin; and, under such circumstances, he may be extremely embarrassed in the administration of the assets. A court of equity will assist an administrator, in order that there may be a convenient administration of the assets, and for that purpose it assumes jurisdiction to inquire for the administrator, who are the creditors and the next of kin; and it takes the best means which the nature of the case admits, by directing advertisements to be published in such newspapers as are likely to be seen by the parties concerned. It does the best it can, but it is obvious that there is no certainty in the proceeding. Wherever the advertisements may be published, they may escape the notice of the creditors or the next of kin. Still, however, it is convenient, in the administration of an estate, that the administrator should have the benefit of the Court's assistance; for, by acting under the direction of the Court, he is protected in his character of administrator. But it being obvious that a person who has just claims upon an estate, may not have the means of coming in to take the benefit of a decree of the Court, it is an established principle that such a person, having been guilty of no *laches* in respect of his demand, is entitled afterwards to call for the assistance of this Court, in recovering what is due to him, against those who have received the property under the administration of the Court. It is admitted that this is perfectly clear with respect to creditors; and the only question is, whether the same principle applies to legatees and next of kin. A creditor does not claim before the Master; and as he does not claim before the Master, he may afterwards present himself to the Court; and if he can shew reasonable grounds for not having made

his claim, the Court will relieve him, by directing an inquiry into his claims before the Master. All this is before distribution; but, even after an estate has been distributed, it has been established, by many authorities, that a creditor may require satisfaction from those who have received the property under the distribution of the Court. The case of *Gillespie v. Alexander*, is a case precisely in point with the present, in respect of the principles upon which it was decided by Lord Eldon. The distinctions taken by Lord Eldon in that case were so strong and clear, as to bring conviction to the mind of every man acquainted with the principles and practice of this Court. It has been argued, that there is a distinction between the case of a creditor and the next of kin, inasmuch as the former may bring his action in a court of law, and the latter can only come into a court of equity for relief. But is not the right equal in both cases? and can it be pretended that a court of equity will not give the same assistance to a person having an equitable title, as to one who has a legal title? But if a legal creditor were to bring an action against an executor protected by an administration of this Court, he might be restrained by injunction; and I believe that even in a court of law, a plea of *plene administravit* would be sufficient to restrain him. However that may be, I am of opinion that there is no distinction, in respect of the rights of a person having a claim upon the assets, whether he be a creditor or the next of kin; and, consequently, that the plaintiff is entitled to the relief which she seeks by this bill. It is quite impossible to impute any *laches* to this unfortunate plaintiff, or to say that she has not used all the diligence of which her lamentable circumstances admitted. The accounts which have been taken of the intestate's estate cannot be opened, with respect to any other matter than the claim of the plaintiff; and the inquiry must be, whether she is the sole next of kin, or one of the next of kin, with liberty to the Master to state special circumstances.

David v. Frowd and others, at Westminster, January 26th, 1833. M. R.

King's Bench Practice Court.

BANKER'S CHEQUE.—INTEREST.

In an action brought to recover the amount of a cheque for 20l., and 10l. for goods sold and delivered, wherein judgment by default had been obtained, and defendant paid 20l. on account of debt and costs generally, plaintiff is at liberty to set part of such 20l. against the goods, and the balance against the cheque; and the Court will refer it to the Master to compute the principal and interest due on the cheque, in the same manner as on a bill of exchange or promissory note.

Douglas moved for a rule to refer it to the Master to compute the amount of principal and interest due on a cheque, to prevent the necessity of issuing a writ of inquiry, under

the following circumstances: The affidavit stated that the action was brought to recover the sum of 20l., the amount of a cheque, dated May 31, 1832, drawn by defendant upon his bankers, payable to himself or bearer, which was refused payment; and also to recover the sum of 10l., for goods sold and delivered by plaintiff to defendant. That interlocutory judgment had been signed for want of a plea, since which time the defendant had paid 20l. on account of the debt and costs.

The Court allowed the payment on account to be set off against the goods, and the balance against the cheque, and granted the rule.—*Norton and others v. Beardshaw*, Jan. 18th, 1833.

NOTES OF THE WEEK.

House of Commons.

REAL PROPERTY BILLS.

The Solicitor General has given notice of a motion for the 14th instant, to bring in Bills to abolish Fines and Recoveries—for the Limitation of Actions—to amend the Law of Dower—the Law of Curtesy—and the Law of Inheritance.

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Mr. Rigby Wason has given notice of a Bill to remove the Suffolk Summer Assizes from Bury St. Edmunds to Ipswich.

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A return has also been ordered of the number of causes entered for trial in these Courts in Hilary Term, 1831, 1832, and 1833.

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An account of the salaries of the Judges in 1792, and the subsequent augmentations, has been ordered. The return is to extend to the Courts of Equity as well as of Common Law.

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An account of this Fund, both in England and Ireland, since 1800, has been ordered, on the motion of Mr. Hume.

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ALTERATIONS IN THE SITTINGS AT NISI PRIUS.

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London Adjournment Day, Tuesday 12th February.

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EXCHEQUER OF PLEAS SITTINGS.

AFTER HILARY TERM, 1833,

Before the Right Honorable JOHN SINGLETON LORD LYNTHURST, Chief Baron of his Majesty's Court of Exchequer.

MIDDLESEX.

LONDON.

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his claim, the Court will relieve him, by directing an inquiry into his claims before the Master. All this is before distribution; but, even after an estate has been distributed, it has been established, by many authorities, that a creditor may require satisfaction from those who have received the property under the distribution of the Court. The case of *Gillespie v. Alexander*, is a case precisely in point with the present, in respect of the principles upon which it was decided by Lord Eldon. The distinctions taken by Lord Eldon in that case were so strong and clear, as to bring conviction to the mind of every man acquainted with the principles and practice of this Court. It has been argued, that there is a distinction between the case of a creditor and the next of kin, inasmuch as the former may bring his action in a court of law, and the latter can only come into a court of equity for relief. But is not the right equal in both cases? and can it be pretended that a court of equity will not give the same assistance to a person having an equitable title, as to one who has a legal title? But if a legal creditor were to bring an action against an executor protected by an administration of this Court, he might be restrained by injunction; and I believe that even in a court of law, a plea of *plene administravit* would be sufficient to restrain him. However that may be, I am of opinion that there is no distinction, in respect of the rights of a person having a claim upon the assets, whether he be a creditor or the next of kin; and, consequently, that the plaintiff is entitled to the relief which she seeks by this bill. It is quite impossible to impute any *laches* to this unfortunate plaintiff, or to say that she has not used all the diligence of which her lamentable circumstances admitted. The accounts which have been taken of the intestate's estate cannot be opened, with respect to any other matter than the claim of the plaintiff; and the inquiry must be, whether she is the sole next of kin, or one of the next of kin, with liberty to the Master to state special circumstances.

David v. Frowd and others, at Westminster, January 26th, 1833. M. R.

King's Bench Practice Court.

BANKER'S CHEQUE.—INTEREST.

In an action brought to recover the amount of a cheque for 20l., and 10l. for goods sold and delivered, wherein judgment by default had been obtained, and defendant paid 20l. on account of debt and costs generally, plaintiff is at liberty to set part of such 20l. against the goods, and the balance against the cheque; and the Court will refer it to the Master to compute the principal and interest due on the cheque, in the same manner as on a bill of exchange or promissory note.

Douglas moved for a rule to refer it to the Master to compute the amount of principal and interest due on a cheque, to prevent the necessity of issuing a writ of inquiry, under

the following circumstances: The affidavit stated that the action was brought to recover the sum of 20l., the amount of a cheque, dated May 31, 1832, drawn by defendant upon his bankers, payable to himself or bearer, which was refused payment; and also to recover the sum of 10l., for goods sold and delivered by plaintiff to defendant. That interlocutory judgment had been signed for want of a plea, since which time the defendant had paid 20l. on account of the debt and costs.

The Court allowed the payment on account to be set off against the goods, and the balance against the cheque, and granted the rule.—*Norton and others v. Beardshaw*, Jan. 18th, 1833.

NOTES OF THE WEEK.

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The Court will sit at Ten o'clock,

CIRCUITS OF THE JUDGES.

England and Wales.

SPRING CIRCUITS.	MIDLAND.	HOMER.	N. WALES & CHESTER.	S. WALES & CHESTER.	WESTERN.	NORFOLK.	OXFORD.	NORTHERN.
1833.	LCJ Denman J. Bosanquet	LCJ Tindal L. Lyndhurst	B. Bayley	J. Patteson	J. Park J. Littledale	H. Vaughan B. Bolland	J. J. Parke. J. Taunton	J. Alderson B. Gurney
Satur. Feb. 16	-	-	-	-	-	-	-	Appleby
Tuesday 19	-	-	-	-	-	-	-	Carlisle
Friday 22	-	-	-	-	-	-	Reading	-
Saturday 23	-	-	-	Cardiff	Winchester	-	-	Newcastle
Tuesday 26	-	-	-	-	-	Aylesbury	Oxford	- [& town
Wednesday 27	-	-	-	-	-	-	-	Durham
Thursday 28	-	Hertford	-	-	-	-	-	-
Satur. Mar. 2	-	-	Welch Pool	Carmarthen	New Sarum	Bedford	Worcester &	York & city
Monday 4	Northamp-	Chelmsford	-	- [& boro'	-	-	- [city	-
Wednesday 6	- [ton	-	Bala	-	-	-	-	-
Thursday 7	-	-	-	-	-	Hunting-	Stafford	-
Friday 8	Oakham	-	-	-	-	- [don	-	-
Saturday 9	Lincoln and	-	Carnarvon	Haverford-	Dorchester	Cambridge	-	-
Monday 11	- [city	Maidstone	-	- [west & town	-	-	-	-
Wednesday 13	-	-	Beaumaris	-	-	-	-	-
Thursday 14	-	-	-	Cardigan	-	Bury St. Ed.	-	-
Friday 15	-	-	-	-	Exeter &	-	-	-
Saturday 16	Nottingham	-	Ruthin	-	- [city	-	Shrewsbury	-
Monday 18	- [and town	Lewes	-	Brecon	-	-	-	Lancaster
Tuesday 19	-	-	-	-	-	Norwich &	-	-
Wednesday 20	Derby	-	Mold	-	-	- [city	-	-
Thursday 21	-	-	-	Presteign	-	-	Hereford	-
Friday 22	-	-	-	-	Launcester	-	-	-
Saturday 23	-	-	Chester	Chester	-	-	-	-
Monday 25	-	Kingston	-	-	-	-	Monmouth	-
Tuesday 26	Leicester &	-	-	-	-	-	-	-
Thursday 28	- [boro'	-	-	-	Taunton	-	Gloucester	-
Saturday 30	Coventry &	-	-	-	-	-	- [& city	-
	[Warwick	-	-	-	-	-	-	-

ANSWERS TO 'QUERIES.

Ratio of Property and Conbepanting.

WILL.—TRUST ESTATES. P. 228.

1. By a devise in general terms, a trust estate will pass ; but a contrary intention will be inferred from expressions in the will, or the purposes or objects of the testator, as charging the estates devised with debts, creating estates tail, &c. See *Attorney General v. Buller*, 5 Ves. jun. p. 341 ; *Lord Braybrooke v. Inskip*, 8 Ves. 433. *Ex parte Morgan*, 10 Ves. 101 ; *Duke of Leeds v. Monday*, 3 Ves. 348.

A. B.

2. In answer to the query of "A Constant Reader," I think, that in the absence of any previous devise of trust estates in the will, the legal estate in the testator's trust estates would pass under the devise to his son William, and would not descend to his heir at law. The rule is now established, that where trust estates have not been specially devised, they will pass under a general devise, unless it is of such a nature as to be incompatible with the nature of estates held upon trust. See the cases of *Marlow v. Smith*, 2 Peere Williams, 198 ; *Ex parte Brettell*, 6 Vesey, 577 ; and *Lord Braybrooke v. Inskip*, 8 Vesey, 434.

T. A.

3. In answer to the question of "A Constant Reader," I beg to state that the trust estates vested in "C. D." the testator will pass to "his son William," under the clause in the will referred to. See *Braybrouke v. Inskip*, 8 Ves.

417. The point was also determined by the present Master of the Rolls in a late cause, *Baring v. Booth*, in which a decree was made on the 14th June, 1832. The testator, F. B., being seised as trustee of certain freehold estates, by his will devised all the residue of his real and personal estate to A. B., his heirs, executors, administrators, and assigns. It was decided, that the trust estates vested in the testator, passed by his will to the devisee, and the bill was dismissed as against the heir at law.

JURIS CONSULTUS.

4. It was formerly considered, that a dry legal estate would not pass by a devise, unless a positive intention that it should pass was apparent on the face of the will. This rule, however, has been varied ; and it is now held that such an estate will pass, unless there appears something on the face of the will negating such an intention : as, for instance, where trusts are declared applicable only to property of a beneficial character. In the case in question, the estate would certainly pass.

W. G. C.

DEVISE.—JOINT TENANTS. P. 211.

The bequest to the three children, James, John, and Jane, *their heirs and assigns for ever* (if there are no other words to implicate a division of the estates) will clearly operate as a joint tenancy ; Leon. 47 ; Tom. Dic. title *Joint tenancy*. But if the words had been to his three children, James, John, and Jane, *their heirs and assigns for ever* (equally to be

divided between them) they would undoubtedly take as tenants in common. See Eq. Ab. 291; 1 P. Wms. 17; 3 Rep. 39; 1 Vent. 32.

H. A.

LIMITATION OF LANDS. P. 228.

1. I am of opinion, that *A.* and her children, born at the time of the limitation, take an estate in common, *A.* for life, (reversion to the grantor) and the children in fee. The children born subsequent to the limitation are not entitled to any interest in the lands, on the principle that a freehold cannot be made to commence *in futuro*.

S.

2. I see nothing in this limitation to take it out of the rule laid down in *Wild's case*, 6 Rep. 17: so that if *A.* had no children at the time the limitation was made, she will take an estate tail; but otherwise, if she had children, she will take with them a joint estate in fee. *Oates d. Hatterley v Jackson*, 2 Stra. 1172. See also *Buffer v. Bradford*, 2 Atk. 220. A. B.

3. There is considerable ambiguity in the construction of a limitation similar to the one in this query. It has been held, that a gift "to *A.* and her children and their heirs," (she having children) gives *A.* and her children joint estates in fee; and that a gift "to *A.* and to her children, and their heirs," gives *A.* an estate for life, with remainder to her children in fee. In the case in question, I think *A.* would first take for life, and then her children in fee; for if they were all to take jointly, the interest of the parent would be continually diminished by the birth of every new born child.

W. J. C.

4. If, at the time of the devise, *A.* had no children, she will be tenant in tail; *Wild's case*, 6 Rep. 17; but if she had any living at the making of the will, she will take jointly with them an estate in fee; *Oates d. Hatterley v. Jackson*; 2 Stra. 1172.

B. M.

HUSBAND AND WIFE. P. 228.

1. Certainly; but not so the purchaser; for as the agreement was made for the sale of the wife's estate, the contract cannot be enforced by the purchaser without the wife's consent.

P. Q.

2. The wife may, I conceive, enforce the performance of the contract made by her deceased husband. The purchaser might have filed a bill for specific performance against the husband; and therefore, there can be no objection, on the ground of want of *mutuality* between the parties.

W. G. C.

VOLUNTARY CONVEYANCE. P. 211.

If your correspondent "E. W.," will turn to Vol. I. Madd. Cha. 271, he will find it laid down as fully settled that a voluntary settlement, however free from fraud, is void against a subsequent purchaser for a valuable consideration, *although such purchase made with notice of the settlement*; and in a subsequent

page it is stated that a voluntary conveyance of real estate in favor of a child, by one not indebted at the time, is good against future creditors, *though not against purchasers*. I should therefore infer, that the conveyance to *B.* in this case, put by your correspondent, is void against *C.*

F. N. L.

Common Law.

LIMITATIONS.—RECOVERY. P. 211.

Taking *A.* and *B.* not to be baron and feme, or persons who may not lawfully intermarry:—in the first case, *A.* will take an estate tail executed in one moiety, and the heirs of *B.* will have a contingent remainder in tail in the other moiety. 2 Roll. Abr. 417, pl. 4. And *A.* may, by suffering a recovery, defeat the limitations over. In the second case, *A.* will be tenant for life of the entirety, with the inheritance in tail in a moiety; and *B.* will be tenant for life in remainder of the entirety, with the inheritance in tail of the other moiety. And they in conjunction may suffer a recovery of the entirety, *A.* making the tenant to the *præcipe*, and *A.* and *B.* being both vouched. Powell on Devises, by Jarman, 2 vol. p. 457. But supposing *A.* and *B.* to be baron and feme, or persons who may lawfully intermarry, the subsequent limitation, in the first case, will not vest in the ancestor taking the estate for life, but is a contingent remainder to the heirs of the body of both baron and feme. And in the second case, the ultimate limitation is not executed in possession, but gives a joint remainder in tail to baron and feme. *Fearne's Cont. Rem.* p. 36 and 37.

A. B.

ELIGIBILITY OF QUAKERS TO SIT IN PARLIAMENT. P. 210.

In answer to your correspondent "A Durham Elector," respecting the eligibility of a Quaker to sit in Parliament without first taking the oaths of allegiance, &c. it will be found, by the 9th James 1, c. 6, that no member shall be allowed to sit in the House of Commons, till he has taken the oaths of allegiance, &c. And by 30 Cha. 2. stat. 2, and 1 Geo. 1, c. 13, that no member can vote in either House, till he has, in the presence of the House, taken the oaths of allegiance and supremacy. The above are particularly repealed, so far as regards the oath by a Quaker, and in the place thereof is substituted affirmation. By the 22 Geo. 2, c. 46, § 36, it is expressly stipulated, "That in all cases wherein, by any act or acts of parliament now in force, or hereafter to be made, an oath is, or shall be, allowed, authorised, directed, or required; the solemn affirmation or declaration of any of the people called Quakers, &c. shall be allowed and taken instead of such oath, although no particular or express provision be made for that purpose in such act or acts."

J. J.

QUERIES.

Common Law.

QUARTER SESSIONS.—WITNESSES.

A general rule of quarter sessions in Lincolnshire is, that the appellant parish shall bring up a pauper to be examined on the hearing of an appeal. Several *subpœnas* have been served upon a pauper. His expenses have been tendered over and over again; and still he declines, and positively refuses attending. What is to be done to compel the pauper to appear? Can the appellant parish officers, or any other parish officers, adopt forcible measures to bring him before the Court? Or how, or in what manner is his attendance to be enforced.

J. J.

STAGE COACH PASSENGER.

A gentleman travelling by coach is greatly annoyed and ill-treated, by another passenger: I shall feel obliged by any of your correspondents informing me the most advisable and practicable legal measures to be adopted in such a case, to obtain redress. On the coachman tendering him his fare, could he be *legally* turned off the coach? Could he be taken into custody by a constable? And as no person knows who or what he is, or where he comes from, or where going to, would not the law fail in every point of view in this particular case?

J. J.

Law of Property and Conveyancing.

EXECUTORS.

A. dies, leaving B. his executor. By the will, the daughter of A. is left a considerable legacy. About four years subsequent to the date of the will she had married B. Must B. act in the trusts of the will to entitle him to receive the legacy in right of his wife?

M. P.

MISCELLANEA.

ARISTOTLE IN INDIA.

A Brahmin of one of the northern provinces of Ceylon, was tried some years ago by a jury of Brahmins of the same province, on a charge of having murdered one of his own relations, with a view, after his death, of getting possession of his property. All the witnesses who were examined at the trial gave such decisive evidence of the prisoner's guilt, that the jury were about to find the prisoner guilty; when a young Brahmin, who was one of the jurymen, stated to the Court that he entertained considerable doubts of the prisoner's guilt, and therefore requested that all the witnesses might be called back again into Court, and that he might be permitted to examine them. Although every one of the jurymen, with the exception of the young Brahmin himself, were fully convinced, from the nature of the evidence which had been given, of the guilt of the prisoner, the Court acquiesced in the application; and on the witnesses being brought back again into Court, the young Brahmin cross-examined them with such talent and skill, that he in a very short time satisfied

his brother jurymen, and the people who were present, that all the witnesses who had given such decided evidence against the prisoner, were engaged in a conspiracy against his life, and that all the evidence which they had previously given, with such apparent consistency, was utterly unfounded. The prisoner was accordingly acquitted; without a dissentient voice; and the young Brahmin was publicly applauded for the great acuteness and perseverance with which he had elicited the truth and confounded the artifices of those who had conspired against the life of the prisoner. Sir Alexander Johnston, who presided in the Court on the occasion, was so much struck with the talents which the young Brahmin had displayed throughout the trial, that he sent for him after the trial was over, and asked from him the nature of the education which he had received, and the course of studies which he had pursued. The young Brahmin, in reply, informed Sir Alexander, that he attributed any skill which he might have shown in examining the witnesses at the trial, not so much to the nature of his education, which had been the same with that of most of the other Brahmins, as to the study of a work which he had procured while he was travelling through the peninsula of India, and which he frequently perused and studied, because it had strengthened his understanding more than any other work which he had ever read. Upon examining this work, it was discovered to be a short summary of the *Dialectics of Aristotle*, which had been translated from Arabic into Sanscrit, and been copied upon a few plane leaves in the *Devenageric* character.

THE EDITOR'S LETTER BOX.

Lawyers in Parliament.—We have to add to our List the name of Mr. James Cornish, a Solicitor, at Totness, in Devonshire, who has been returned for that Borough. We are asked whether Mr. Parrott, his colleague, is, or has been, of the same profession.

In reply to F., we have to state, that the Second Real Property Report, which related solely to the General Registry Question, was reviewed in our First Volume, and the subject has been so amply discussed throughout the Work, that we deemed it unnecessary to print the Report at large. We are not aware that any other material Report has been omitted.

There may have been some inaccuracy in classing and numbering the Lectures of Professor Park, but we believe that all the Introductory Lectures have been given in the Monthly Record or Supplement; and we hope the state of health of the learned Professor will soon enable us to continue the series.

The Letter on Provisional Assignees of Insolvent Debtors' Estates, shall have our attention.

The Queries and Answers of J. B.; "Mancuniensis"; R. M.; "An Old Subscriber"; J. L. B.; "A regular Subscriber"; J. G. B.; and J. L., we hope to find room for next week.

The Legal Observer.

Vol. V. SATURDAY, FEBRUARY 16, 1833. No. CXXV.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

PROCEEDINGS IN PARLIAMENT.

CHANCERY LUNATICS.

THE Chancellor has commenced his plan of Chancery Reform by the revival of his Lunatic Bill, which we have already printed*. We have always approved of this measure, which relates entirely to Chancery Lunatics, the treatment and management of all other insane persons being regulated by the 2 & 3 W. 4, c. 107. By this Bill, it is intended that the Chancellor shall be empowered to direct a commission, in the nature of a writ *de lunatico inquirendo*, to any one person, who may issue precepts to the sheriff to summon a jury, and compel the attendance of witnesses and the alleged lunatic. It is intended, by means of this provision, in future to direct the commission to a single Judge, sitting at *nisi prius*, and thus to lessen the enormous expense now attending a contested lunacy. With the cases of *Davies*, and *Bagster* fresh in our recollection, we should have hardly thought that this measure would have been opposed by any person, not personally interested in its continuance. Whatever the merits of the present Commissioners may be, we must confess we greatly prefer the unassisted power of Lord Lyndhurst, Mr. Justice James Parke, or Mr. Justice Patteson, or indeed any other of the fifteen Judges, to the triple exertions of the former learned persons; for which preference we need give no other reason than that a Judge

of the Superior Courts of Common Law is constantly in the habit and practice of presiding in similar enquiries, and must therefore possess greater capabilities for their despatch than gentlemen, either practising as barristers or practising not at all. We also fully approve of that part of the Bill which provides for the appointment of Visitors, for the inspection of Chancery lunatics.

Lord Wynford objects to the Bill, inasmuch as a single Commissioner may be taken ill, in which case a fresh commission must be directed to some other person; but this objection would apply to the whole system of our Circuits, and *Nisi Prius*. His Lordship also seemed to suppose that it was the duty of Masters in Chancery personally to superintend the care and treatment of lunatics,—in which, however, we beg to assure him he is in error.

Lord Eldon is at least consistent with himself. “He was not prepared to go into the subject fully at that moment;” [the Bill has been before the House upwards of a year] “but if the House could delay its decision till next week, he would think it his duty to lay before it all the information in his power.”

The Lord Chancellor, we confess, to our mind completely answered all objections urged against the measure; and we were happy to hear the conclusion of his speech. He again reiterated his determination to abolish all useless offices in the Court in which he sat. He at the same time declared his determination to introduce the proposed measures, although it might be necessary to create new and useful places.

* 2 L. O. 388.

with moderate pay and plenty of work. "Measures had originated with him before he took office, and before he could have had the least shadow of an interest in the disposal of patronage, which measures were afterwards adopted by a government to which he was opposed, and which filled up the places created under them by persons in whom he could not be thought to repose the utmost confidence. Nevertheless, he then proceeded in the discharge of his duty, without being biassed by any such consideration, and offered no impediment to the then ministers in that respect. As he had acted then, he should continue to act now, and propose measures of public utility, without reference to patronage or to the creation of office, and without stopping to consider who was to profit by it, so long as the public interest was promoted."

So long as the Lord Chancellor shall act on these principles, he may be sure that he will be supported by the profession, and that he has nothing to fear in the prosecution of measures founded on them. We await, however, with anxiety, the introduction of his new Bills for Chancery Reform.

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In a former number ^b, we have proved that, according to the original institution of Tithes and established precedents, the public have the right of remodelling the existing Church system, and making such appropriation of her property as necessity may require. The principle, therefore, of the measure just introduced with respect to the Church in Ireland, cannot be disputed; and we conceive that the only point in question with respect to it is, as to the extent to which the contemplated reform should go; and when we recollect that in nine Irish counties the people positively refused to pay tithes, and that when goods were seized in default of payment, they could not be sold, as no purchaser could be found for them ^c, it must be admitted that some strong and effectual remedy was necessary. We are disposed, therefore, to concur in the Bill which has been introduced, which seems likely to ameliorate the distressing state to which that part of the kingdom has been reduced, and to restore confidence in the Government, in the minds of the Irish people.

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The following is the Plan proposed:

"That all dealings and charges affecting lands, instead of being recorded and deposited in a public register office, shall be required, by law, to be recorded or registered on the *title-deed* of the party selling or charging the estate. This record or register to be effected by a *memorandum*, of a specific and short form, calculated to give notice to after dealers, of the existence and nature of such prior dealing or charge.

"It will probably be conceded that, when a man intends to lay out his money upon a purchase or mortgage of an estate in land, it is a prudential duty, on his part, to call for the *title* of the party with whom he deals; and, especially, for the *title-deed* on which such party founds his own immediate ownership and right of disposal. The man who parts with his money without having taken this prudential step, is guilty of a degree of gross negligence which deserves no favour. This precaution is called for alike by the rules of prudence and of common sense. Thus, then, if the intended vendor or mortgagor produce his title-deeds for inspection, whatever appears thereon will be *within the knowledge* of the inspector; and he will act with his eyes open, so far as regards all the facts so disclosed. Now, if it were enacted that every dealing affecting the title, by the owner for the time being of the estate or interest dealt with, shall be inscribed or indorsed, by a sufficient *memorandum*, on the *title-deed* which conferred such estate or interest upon such owner, i. e. *his own immediate title deeds*; and that such dealings as are *not* so indorsed shall be *postponed* to such as are; the parties *first* dealing with such owner, will take just the same care to indorse a *memorandum* of their claim or charge on such title-deeds, as they would do to register such claim or charge in the proposed register office; the *penalty* being precisely the same in both cases. To put this in its plainest form it would be thus:

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satisfied with the title produced by A., he takes a mortgage of the estate, and pays his money. A., afterwards, forms a design of selling the estate to C.; and of *suppressing* the fact of the existing mortgage made to B. On the proposal to sell, C.,—as common prudence requires,—demands the usual proofs of A.'s title, and, amongst others, the inspection of the *title-deed* of conveyance to A. Now A. must either produce this title-deed, or C. will pay nothing. This title-deed must be in the hands of either A. or B. (the first mortgagee)—it *ought* to be in the hands of B.; and in *honesty*, that fact, and the *charge*, ought to be made known to C.; but *dishonesty*, and not honesty, is intended. C., however, is expected to be so far on his guard as to require the production of this deed; and it is produced,—either by some trick of A., or by actual collusion with B. Now, as the law stands at present, A. and B. have it in their power *fraudulently* to conceal the mortgage. The production of the title-deed by A., free from all notice of the charge, misleads the purchaser into the belief that all is right; accordingly he pays his money, and takes a conveyance from A. Subsequently, the suppressed mortgage is produced, and B., in right of his *priority*, ousts C. from the estate.

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this act, *before* the registration of the subsequent assurance.' (Clause 41.)

"Let us next consider the *practicability* of this plan of registration by inscription or endorsement of title-deeds. The first inquiry is,—upon what specific deed is the memorandum to be inscribed, in each particular transaction? The answer is,—upon *that* deed which vested the ownership and right of disposal in him who contracts to sell or charge it,—*that* document which is emphatically known as his *title-deed*. As regards estates held under deeds of the ordinary class, such as conveyances operating by way of *purchase*, which have simply conveyed the lands proposed to be charged or sold to him who takes it to market—a class of documents far more numerous than any other, and comprising all the *ordinary* traffic in landed property—no difficulty can be supposed to exist, in fixing upon the proper deed for the register."

Several objections to the Plan are anticipated and answered, and the following is a summary of the advantages of private, over official registration :

"First, That there will be no official machinery, and no official forms or fees required, so far as regards ordinary dealings and traffic in landed property;—a machinery, which must inevitably become more and more massive and complicated the longer it endures; and necessarily charge the country with a very considerable annual tax.

"Secondly, There will be no difficulties or delays, either official, or in respect of distance, agency, &c. in effecting the registry, or in searching for charges and claims; nor risk of accidents, in portage of documents, &c., nor of official mistakes.

"Thirdly, There will be no exposures of title or credit, beyond what is really wanted for the time being, in dealings with the land; the documents themselves giving notice to those who are dealing for the land, or others interested and entitled to inspect them.

"Fourthly, This kind of registry may be completed by the parties, at the same place and time with the execution of the deeds themselves.

"Fifthly, The inscribing these memorandums, in order to secure their own *priority* of claim, will be made to depend on the vigilance and care of the individuals concerned, and their responsible agents, and on whom it ought to depend.

"Sixthly, Every man will, by this means, have in his own keeping, and within his immediate reach, at any time, both his title-deeds and evidences of charges; so that he may, without risk or delay, satisfy an inquirer, with whom he would deal for sale or loan, of the security of his title, by the immediate production of the deeds and the registry together.

"Seventhly, The proposed plan does no violence to existing forms and existing habits of business; but readily falls in with, and

adapts itself to the long-established modes of conveyance and charge. It alters nothing in time, place, party, or form in the transaction; adding only one short form more, of the easiest and most familiar kind."

Specimens are given of the proposed forms of indorsement, which appear to be skilfully prepared, and shew the practicability of the measure. The treatise enters into many comparative statements of the advantages of the Plan, as compared with a public registration, to which we shall direct the attention of our readers when the new bill is introduced.

MR. CHAPMAN'S PRACTICE.

WE have much pleasure in drawing the attention of the Profession to Mr. Chapman's second Addenda to his Practice. The peculiar advantages which that gentleman possesses for giving information on the subject of Practice, must render any book published by him on that subject very useful to the practitioner.

The principal object of this Addenda is, to shew, in a practical form, the mode of carrying the provisions of the Uniformity of Process Act into effect. This object he has fulfilled in an able manner. He has given many valuable suggestions as to the mode of proceeding under the Act, in those cases where Rules of Court or decisions do not assist the practitioner.

He has also given some necessary information on the mode of proceeding under the Interpleader Act; and in various parts of the work he has interspersed remarks and information upon other practical points, arising out of the New Rules.

We shall have occasion to discuss some of the subjects on which he has touched, between this and the next Term.

THE LAW OF ROYAL FISH.

IN a case just reported by Dr. Haggard, 2 Adm. Reports, p. 438, there is some curious information respecting royal fish. It is rather an odd authority to cite, being "*In the matter of a whale*." It arose from a dispute between the Lords of the Admiralty and the Lord Warden

and Admiral of the Cinque Ports, respecting a certain whale which was discovered three miles from the shore, and towed towards Whitstable beach. A warrant was issued under the seal of the High Court of Admiralty "for the arrest of the whale, oil, blubber and bones;" and it was alleged on behalf of the Lord Warden, that the same having been found within the precincts of the Cinque Ports, belonged to him; but the Admiralty argued to the contrary. The following parts of the judgment of Dr. Phillimore are interesting.

"The right of the sovereign to all royal fish, by which appellation whale and sturgeon are characterised, is a right to which our ancestors attached much importance, and it has descended to our times, as clearly established, as any prerogatives of the crown. We do not go so far as to assert, as some have maintained, that the right is founded on the claim of the king of these realms to the sovereignty of the seas from which the whale has escaped; but from whatever source derived, it is the undoubted law of this realm, that a whale found on the shore, or caught near the coasts of Great Britain, is to be considered not only as being, but as having always been, the property of the crown; property, indeed, so inherent in the crown, that by a species of legal fiction, it is to be restored to the king as its rightful owner; *veterem ad dominum debere reverti*. Juv. 4, Sat. v. 52. The law on this point being clear, when this case came before the Court on a former occasion, the question of salvage was readily disposed of; neither party who claimed a right to the whale contested the claim of the salvors to remuneration; but the question of who had a right to the whale, was one of greater difficulty; and I felt the difficulty so much, that I directed the case to stand over for the purpose of allowing evidence to be introduced, that might tend to elucidate or explain it. Although the whale may vest in the crown in virtue of its prerogative, yet the sovereign may have transferred, and undoubtedly from the documents before me, it appears that the sovereign in this instance has transferred this ancient perquisite to another person; but the question is, to what person? On the one hand, the commissioners for executing the office of Lord High Admiral claim it as a right transferred to the high functionary they represent. On the other, the admiral of the Cinque Ports, who has a right at least to all the perquisites of the Admiralty within his jurisdiction, claims it in virtue of his office. In the patents exhibited of the Lords Commissioners of the Admiralty, no mention is made of royal fish. The grant is of all "duties, rights, and privileges," to which the Lord High Admirals or other Admirals were entitled; but on reference to the patents of the Earl of Pembroke, who was Lord High Admiral in the time of William III., and of Prince George of Denmark, who held the

same office in Queen Anne's reign, they contain the following words:—"Royal fish; *vis.* sturgeons, grampuses, whales, porpoises, dolphins, riggs, and graspes, and generally whatsoever other fish having in themselves great and immense size or fat." So with respect to the Lord Warden: the Duke of Wellington's patent grants him "all the commodities, emoluments, profits, and perquisites, in as ample a manner as they have been granted to his predecessors." And this is the general tenour of all the patents I have had an opportunity of inspecting; the first of which in point of date is, that granted by Charles I. to the Earl of Suffolk on the resignation of Villiers, Duke of Buckingham, in 1628: he was to have the "commodities, emoluments, profits, and privileges thereunto belonging, in as large and ample a manner, as Henry, Earl of Northampton, Edward Lord Zouch, or the Duke of Buckingham, or any other before them, held and enjoyed the same." What then were the privileges and emoluments originally conferred in detail on the admiral of the Cinque Ports? In the absence of positive evidence, surely there is every presumption that they were at least as ample as those conferred on the Lord High Admiral; if so, the question must entirely hinge on the priority of the patent; for it is clear, that if the immunities had been already granted to one admiral, they could not be parcelled out of the other; that is, if they were first granted to the Admiral of the Cinque Ports, the Lord High Admiral's patent must be held not to include these perquisites, when accruing within the limits of the Cinque Ports. We know that at an early part of our history, there were several admirals of England, and that each exercised jurisdiction within his respective boundaries. We know also that the admiral of the Cinque Ports was amongst the most ancient of these admirals. There can be no doubt, I think, but that patents were granted to admirals of the Cinque Ports, (which purported to convey to them the right of whales and other royal fish), at an earlier date than that of either of the patents to the Lord High Admiral, which have been produced in this cause. We have the remarkable testimony of Leoline Jenkins to this fact, who in a charge given at a session of the Admiralty, holden within the Cinque Ports in 1668, after stating that four centuries back, there were always two or three admirals in England, and that the admiral of the Cinque Ports was still one, if not the chiefest of them, adds: "and those great fleets which these parts did then furnish on all occasions, called and reputed by way of preeminence, the king's navies royal, were still commanded by the Lord Warden or their admiral, and he had all the authorities, rights, and royalties belonging to an admiral annexed to his office, as appears by the commissions of Beauchamp and Herle, who were Wardens and Admirals of those ports in Edward III's time." In another part of the same charge, he distinctly refers to the grant of the prerogative in question: "All fines and amerciaments imposed by this Court, are the admiral's; all

royal fishes, such as whales and sturgeons, are his." For these reasons, and on these authorities, the right of the Lord Warden was preferred, and judgment was given accordingly.

THE LEGAL REMINISCENT.

No. V.

To the Editor of the Legal Observer.

Sir,

IN one of your late numbers you half reproach me for not continuing my Reminiscences, and I think you have some reason to complain. I can only say in excuse, that I find it more difficult than formerly to exert myself, even to the extent of writing an ordinary letter. Besides, my own contemporaries are now fast disappearing, and I have few persons with whom to compare notes. If I go into the Courts, I hardly know even the Judges; and almost all the gentlemen with silk gowns, I recollect on the back benches, holding briefs or motion papers, "few and far between." Indeed, it is surprising what changes are made by the lapse of twenty years in our profession.

I never was a mere lawyer: I always liked, if possible, to look beyond the precise limits of my own profession, and to mix with persons of other classes. I am sorry to say that, in general, lawyers are far too fond of "the shop." If you meet one in company, he is generally either quite silent, or he amuses the company by some circuit anecdote or *nisi prius* joke. He is heard by his own clients with so much submission, that he is half affronted if he meets with attention less profound. He is constantly interlarding his discourse with the technicalities of his own profession, and treats all matters as a lawyer. He takes objections like that of Hogarth's counsellor, who insists that a man who had lost his arm cannot be sworn, because he cannot take the book in his hand.

This puts me in mind of a story told of Sir James Marriott, the Judge of the Court of Admiralty, a man of great professional learning. In 1765, in the debate on the first American war, he rose at the end of the third day's debate, and said, "Upon a question so important, I cannot conscientiously give a silent vote, particularly as the matter appears to me to have been mistaken during the whole argument. The question discussed had been with reference to the propriety of the taxation of America, as she was not represented; whereas, in truth and in fact,

America was represented: for upon our first landing in America, we took possession of that continent as part and parcel of the manor of East Greenwich, in the county of Kent."

Another lawyer, on seeing Macbeth represented, on the exclamation of the witches that they were doing a deed without a name, called out, "Then it's not worth a farthing." These are instances of a lawyer's thinking of nothing but his profession. They may also make mistakes, from knowing too little—As an instance of this, I may tell a story which I have heard fixed to several barristers, but to which it really belongs is beyond me to decide. In an action of trespass, the justification set up was an entry on the *locus in quo*, for the purpose of cutting down wood for *firebote*. The witnesses were examined for the defence, and the opposing counsel, who was more celebrated for his eloquence than his law, thus conducted his cross-examination:—"You say you went on the land for the purpose of cutting wood?" "Yes, Sir." "What, pray, was the size of the wood you cut?" "Small twigs and switches, Sir." "What—twigs and switches? What right had you to cut them?" "I cut them for *botes*, Sir." "Boats, indeed! Why, they wouldnt do for walking sticks!"

You will recollect also the story of a junior counsel having to move for a commission to examine witnesses, which was abbreviated as usual on the motion paper, "To move for a *comm'on* to examine witnesses," moving accordingly for "a common to examine witnesses:"—to which the Chief Justice gravely replied, "Are there many witnesses, Sir?" "I believe there are, my Lord," was the reply. "Then, perhaps, you had better take Salisbury Plain!"

I am afraid I am indulging in an old man's privilege of telling old stories. I shall, however, conclude with one which, perhaps, you may never have heard. I have lately heard it told as of the present day. I think, however, that it is one of an older date. As it is now related, it is as follows: In the Court of Exchequer, the clock, until lately, has been facing the Judges. Very recently, however, it has been placed on the side of the Court. A barrister, on coming into the Court, enquired of another the reason of the change. "Oh," said he, "I believe it did not go well where it was, and so they have set it aside for irregularity."

I am, Sir,
Yours very truly,

SENEX.

DISSERTATIONS ON
CONVEYANCING.
No. X.

ON THE CONSTRUCTION OF THE STATUTES
OF LIMITATION AND NONCLAIM ON FINES.

THE dissertation under this title, *ante*, p. 220, relating principally to the title of an heir, being himself under a disability, and claiming under a person also disabled, being a different point from that of a party under the disability of infancy at the time of the accruer of his right—a second disability, that of absence, accruing before he attained majority, which was the one in dispute between Mr. Fearne and Mr. Serjeant Hill; it is proposed briefly to ascertain, whether the statutes begin to run from the cesser of the first, or from the removal of the second disability.

Mr. Fearne contended, that “although an infant heir be beyond sea during his infancy, without having been in England after he came of age, yet that was no excuse of his nonclaim after he came of age, *he being in England at the time of his title accruing on his father's death*, because the savings in the statute *are confined to disability existing at the time of the right or title first descending or accruing.*” Mr. Serjeant Hill, on the contrary, maintained, “that when the person entitled is under one kind of disability at the time the title accrued, and *before that disability was removed* the party entitled was under another disability, then that the ten years in the one case, and the five years in the other, *would not begin to run till both disabilities were removed.*” It appears from the subsequent case of *Doe v. Jones*, 4 T. R. 300, that Lord Kenyon concurred with Mr. Fearne; his Lordship being reported to have said, that “when the disability is once removed, the time begins to run.”

It is presumed to be the understanding of the profession, that his Lordship alluded to the *disability existing at the time of the right accruing*: it is so stated in the 1st Vol. of the Monthly Record, p. 145, “that the disabilities mentioned in the statutes must exist at the time when the right first accrued.” *Dillon v. Leman*, *ante*, 220, is, by inference at least, an authority for the contrary opinion of the learned serjeant; and *Cotterell v. Dutton*, *ibid*, is express—“that if there be a *succession of disabilities*, they must *all* be removed before the respective statutes begin to operate;” and therefore it is submitted, that upon this point *Doe v. Jones* is not law. It is, however, frequently cited as an authority, admitting of no exception, that “when the statute begins to run, it is not arrested by a disability subsequently arising.”

It is somewhat singular, that neither Mr. Serjeant Hill nor Mr. Fearne referred to the passage in the Touchstone, which was cited by Mr. Justice Grose in *Doe v. Jones*. “There is a passage,” said his Lordship, “in Shep. Touch. p. 30, which is decisive of the question. It is there said, that if they be in England at the time of levying the fine, and after go beyond the seas, and suffer

the five years after the proclamations to pass, in this case they shall have no longer time, *except they be sent in the King's service and by his command.*” From the report of that case it appears, that each of the three learned judges who decided it took a different view of the question of voluntary and involuntary disabilities: Lord Kenyon denouncing it altogether, briefly observing, that “it would be unischievous to refine and to make nice distinctions between them:” and Mr. Justice Ashurst said, “If the disability be once removed, the time must continue to run, notwithstanding any subsequent disability, either voluntary or involuntary;” adding, “*and even if there were any distinction*” (language which, it is submitted, implies a doubt) “between the two kinds of disability, *the present is against the plaintiff;*” whilst Mr. Justice Grose, it is observable, clearly admitted the exception, as to those persons “*who were sent beyond sea in the King's service and by his command.*” It is therefore proposed, shortly to enquire upon what authority the exception is founded.

In the first place, it is clear that it furnished no point in *Doe v. Jones*; and therefore, so far as that case goes, it is presumed that the observation of Lord Kenyon, without any reference to authority, must be considered as mere dictum; whilst that of Mr. Justice Grose, although not of positive authority upon the point (it not calling for judicial decision), yet, supported as it is by the Touchstone, is entitled to much greater consideration; especially when it is considered that my Lord Kenyon's authority upon the first point appears to have been since overruled. The authorities upon the point are not only *not express*, but are apparently very limited. It appears, however, from Bythewood's ed. of Noy's Maxims, p. 14, that West's Symb. Part 2, 68 a, and Shep. Couns. 58 & 77, (to which I can only refer,) are authorities in support of the exception; and the 2d Resolution, in 8 Rep. 101. was, that “although William Coprey was out of the realm at the time of the death of his father, *although that he was not in the King's service, he was not barred;*” from which it would appear, that the being in the King's service was then considered to make a difference in the case. This view of the question seemed dissatisfactory to Mr. Preston, who observes, in his emendation upon the passage in the Touchstone, “It does not appear that such command and absence would suspend the bar, since the statute has not introduced any saving for persons thus circumstanced.” This is admitted; but as the exception is founded upon an exercise of the prerogative inherent in the Crown at the common law, and which, besides being unaffected by any of these statutes, actually agrees with the maxims, “*Nihil potest Rex quasi quod de jure potest,*” and “*Actus legis nulli facit injuriam,*” it is submitted, that the exception in the Touchstone is good law; and that although *Doe v. Jones* is cited as an authority, that “when the time upon these statutes begins to run, it is not arrested by a subsequent disability,” this exception must be allowed to that otherwise general rule.

C. S.

SELECTIONS FROM CORRESPONDENCE.

No. XX.

METROPOLITAN LOCAL COURTS.

It does not appear to be generally known, that there exist in the city of London two courts, called the Sheriff's Courts, wherein are tried actions of debt, case, trespass, covenant, and other personal actions, attachments, and sequestrations.

By the custom of London, if *A.* is indebted to *B.*, and *C.* is indebted to *A.*, *B.* upon entering a plaint against *A.*, may attach the debt due from *C.* to *A.* This custom also extends to goods, which a creditor can attach, either in his own hands, or in the custody of a third person. By these means debts are frequently recovered which would otherwise be lost.

The Sheriff's Courts have just been thrown open, by the common council, to all solicitors who are freemen of the city, and who shall obtain the consent of the Court of Aldermen. We are informed, that ten attorneys of the superior courts were sworn into office in these courts on the 29th of January.

Those who are unfortunate enough to have debts due to them, will no doubt avail themselves of the advantages of these courts, now that the number of attorneys practising there is increased. Here debts of any amount may be recovered, and a cause can be tried for about 7*l.*, including all expenses: if the debtor should not defend the action, the costs will only amount to about 3*l.* When the debts are small, the benefit of the Sheriff's Courts will be principally felt. An action, when defended, can be tried here in three weeks; and if no defence is made, execution can be obtained in a week.

N.

THE PROVISIONAL ASSIGNEE OF INSOLVENT DEBTORS.

To the Editor of the Legal Observer.

Sir,

THE Lord Chancellor having decided, that the orders made by the Vice-Chancellor, substituting the name of Mr. Sturgis, the present Provisional Assignee of the Insolvent Debtors' Court, in all the future proceedings in causes in which Mr. Dance had been made a defendant in that character, are insufficient^a, I shall feel obliged if you, or any of your readers, can inform me whether the Chancellor has expressed any intention of passing a short act of parliament to render such orders operative, and prevent the delay and expense which the filing of supplemental bills will occasion in this case, and on any future death or removal of the provisional assignee. Such an act, to operate prospectively as well as retrospectively, and to protect the suitors of the Court from unnecessary costs on the death or removal of a provisional assignee, is certainly most desirable.

C. M.

^a See *ante*, 285.

STATE OF THE CHANCERY RECORDS.

We fear that the weighty matters at present before Parliament will prevent a due degree of attention being paid to several important particulars relating to the Law. Among these is the proposal for a General Record Office, and, connected with it, a Judges' Hall and Chambers. As one of the means for proving the necessity of a Record Office, we shall subjoin a statement of the condition of the Chancery Records, extracted from Mr. Cooper's Book. The Six Clerks, in the year 1732, gave an account of the records in their custody, observing—

“That those records, while the causes are in agitation, remain in their respective studies in their office, or in the seats of their sworn under-clerks, that a ready recourse may be had to them, as occasion requires; but when the causes are determined, the records are from time to time carried up into the record rooms over the office, where they are made up into bundles, digested alphabetically, and according to the several years of the commencement of the suits, and there deposited in proper stands to receive them; for which purpose each of the Six Clerks hath a particular Record Keeper, who makes alphabetical lists and calendars from time to time of all such records as are brought up, and which are entered into certain books kept in the said Record Rooms for that purpose, for the more easy search and finding of any record that may be wanted:

“That when the quantity of records hath become very great, the more ancient of them have been usually transmitted to the Tower of London, by virtue of warrants from the Master of the Rolls for the time being, directed to the Six Clerks for that purpose, and received by the Clerk of his Majesty's Records of the Court of Chancery within the Tower of London, and deposited in the Record Office there:

“That the last transmission of records from the Six Clerks' Office to the Tower of London was in October 1671, and consisted of all such as were then in their custody to the year 1649, 1 Car. 2.

“That in August, 1712, the records in the Six Clerks' custody having become very numerous, and there being very little space left in their Record Rooms for the reception of those which daily came in, the Six Clerks obtained a warrant from the Master of the Rolls for transmitting to the Tower all the records in their custody, to the first year of the reign of the late King James; but upon their acquainting the Record Keeper of the Tower therewith, he informed them, there was not room sufficient to receive the Records in the places already allotted at the Tower for that purpose.”

Various applications were made to the then Lord Chancellor, the Lords of the Trea-

sury, and the Board of Ordnance, to obtain one or more of the Towers; but after many references and enquiries, with consequent reports thereon, and addresses to the Crown, no effectual progress was made.

In the year 1800, the subject was again resumed; and the following is an extract from the return made to a Select Committee:—

“ That in the return made by the Six Clerks in the year 1731, they laid before the Committee the then state of the records under their care, and the endeavours they had long ineffectually used for the purpose of removing to the Tower of London the great accumulation of records in their office, which for want of room had been crowded into improper places, and lay very much exposed to danger; but nothing having been done in consequence of such representation, the Six Clerks, in the year 1736, made their final application to the Lord Chancellor Talbot, who was pleased to second their humble application to his late Majesty, King George II., for his royal warrant (which his Majesty was thereupon graciously pleased to grant) to the officers of the Board of Ordnance, thereby commanding them to provide a proper repository at the Tower for placing the said records, which was accordingly done; and the same having been afterwards fitted up under the direction of his Majesty's Board of Works, for the reception of the said records, the Six Clerks diligently applied themselves to the removal of all records under their care, from the beginning of the reign of King Charles II. up to the year 1714; and it appears to have taken up near six years to sort, clean, and bundle up those records, and to make a fair calendar thereof, in order to be transmitted therewith to the Tower, and to make a similar arrangement and calendars of the records which were to remain under their care; all which was done, as appears by the several bills of charges, at an expense to the Six Clerks of upwards of 1000*l.*, for which they never obtained any recompense whatsoever; and the Six Clerks having procured a warrant, dated 16th October, 1738, from his Honor the then Master of the Rolls, for the transmission of the said records to the Tower, all the records under their care, from the beginning of the reign of King Charles II. before and unto the first day of Michaelmas Term, 1714, were thereupon delivered to David Polhill, Esq., Clerk of his Majesty's Records of the Court of Chancery within the Tower of London, or to his deputy there.

“ Upon the removal of the Six Clerks, in the year 1778, to their new office, notwithstanding an order had been made by his Honor the then Master of the Rolls, upon the application of the Six Clerks, previously to the aforesaid transmission of records to the Tower, that the Sworn Clerks and Writing Clerks should deliver to the Six Clerks all the records which were upon their seats, and had not been before brought into the Record Room; and that the

same be sorted and bundled by them, and delivered to the Six Clerks, with complete calendars or lists thereof; it appeared that such order had been very imperfectly obeyed, and that a great number of records of several years prior to the year 1714, had been discovered to be detained upon the seats of divers of the Sworn Clerks and Writing Clerks (commonly called the Sixty Clerks); in consequence whereof, the Six Clerks caused all the last-mentioned records to be sorted, cleaned, and bundled up, making in all fifty-one bundles, and correct calendars made thereof by their own immediate clerk or agent, under their inspection; and having obtained a warrant from his Honor the then Master of the Rolls, bearing date the 30th day of July, 1779, for the transmission of the said fifty-one bundles to the Tower, the same were accordingly delivered, with the calendars so made thereof as aforesaid, to Thomas Astle, Esq., Clerk of his Majesty's Records of the Court of Chancery in the Tower of London; upon his receipt, bearing date the 23d day of October, 1779.”

The great inconvenience of the present place of deposit, is too obvious to need remark. It is grievously felt, not only by the Members of the Profession, but by every one who can have occasion to search these repositories. A Building for these, and the other records of the kingdom, cannot long be delayed; and we have only now to add, that we trust the opportunity of combining a Judges' Hall and Chambers with a Public Record Office (on which we have frequently observed), will not be neglected.

SUPERIOR COURTS.

Court of Chancery.

EVIDENCE.—PRIVILEGED COMMUNICATION.

The rule as to privileged communications is not confined to professional communications with a counsel or attorney in relation to a cause pending, or about to be commenced, but the protection is extended to all professional consultations or confidential communications, which would not be made, and of which the witness could not have any knowledge otherwise than by being ENTRUSTED PROFESSIONALLY.

Sir Edward Sugden moved for an order to reverse a decision of the Vice Chancellor, and to compel the defendant to produce, for the inspection of the plaintiff, several accounts, books, and papers, which related to transactions between the defendant and a Mr. Dartnell, and which were material to the plaintiff's case. The facts were these:—Mr. Dartnell was empowered, as trustee under a will, to borrow, to the amount of 5000*l.* of the trust-

money, upon giving security that he was of sufficient substance to repay it. Upon the representation of Mr. Gaskell, the defendant in this suit, then acting as Mr. Dartnell's solicitor, the sum of 1680*l.* was lent to him out of the money in Court. It being afterwards found that Mr. Dartnell was insolvent, a demand was made on him for re-payment of the 1680*l.*, and a suit was commenced. Mr. Gaskell was responsible for this money, advanced to his client upon his representations; and he, knowing that, advanced so much to Mr. Dartnell to pay it in, taking bonds of the plaintiffs in this suit to secure to himself the sum thus paid by him. In the course of these transactions several communications passed between the defendant and Mr. Dartnell, and Messrs. Adlington and Co., the town agents. These were the communications now called for by the plaintiffs, as material evidence in the suit instituted by them against Mr. Gaskell, who refused the production of them, on the ground that they were confidential communications between client and attorney, and therefore privileged. But these communications, not being made in this suit, or in contemplation of this suit, but in a former suit, with which these plaintiffs had no concern, were not within the rule of privileged communications. That rule was the same at common law as in equity, and was restricted by Lord Tenterden to those communications which relate to a cause or suit existing at the time of the communication, or then about to be commenced; *Williams v. Mundie*, 1 Ryan & M. N. P. Cases, 34. The rule was also so laid down by the House of Lords, in *Radcliffe v. Fursman*, 2 Bro. P. Cases; by Lord Lyndhurst, in this Court, in the cases of *Hughes v. Biddulph*, and *Vent v. Pacey*, 4 Russ. 190 and 193; and was followed in the late case of *Bolton v. The Corporation of Liverpool*^a.

Mr. Koe was on the same side.

Mr. Pepys opposed the motion.—Defendant was an attorney for Mr. Dartnell, and these papers were confidential communications made to him as such attorney. The general rule was, that confidential communications between attorney and client are not to be revealed at any time, not even in an action between third persons, as in the present case, nor after the proceeding to which they referred is at an end, nor even after the dismissal of the attorney; 1 Phill. Evi. 131. "This is the privilege of the client, and not of the attorney, and it never ceases; the mouth of such a person is shut for ever." This was the language of Mr. Justice Buller, in the case of *Wilson v. Rastell*, 4 T. Rep. 759. If this Court were to reverse the Vice-Chancellor's decision, by ordering the production of these papers, no attorney could ever after resist the production of any communication, however professional and confidential. Besides, a great injustice would arise from such an order in this case, as the client was not a party on the record, the ques-

tion being raised in his absence, in a suit against the attorney. These communications were in professional confidence, and were therefore protected within the old rule of law laid down and recognized in *Wilson v. Rastell*, *Du Barre v. Levette*, Peake's N. P. 77; and lately in *Clark v. Clark*, 2 Moody & M. 3; in which Lord Tenterden said, that the rule, as stated to have been laid down by him in *Williams v. Mundie*, was narrower than he was likely to have laid it down.

Sir Edward Sugden, in reply—The rule was confined to the protection of communications in relation to a suit already commenced, or to be commenced. There was no confidential professional communications in this suit—which had nothing to do with the former suit, in which Dartnell was defendant—it is upon the fraudulent transactions between this defendant and Dartnell in that suit, that the equity of the plaintiffs in the present suit arises.

The Lord Chancellor having observed that it was difficult to reconcile the decisions at common law, said he would take time to consider the question.

His Lordship gave his judgment on the last day of term. "This was an appeal motion from an order of the Vice-Chancellor, refusing an application for the inspection of several books, accounts, papers, &c. except such as were named in a schedule annexed to the defendant's answer, which the defendant was willing to produce. I agree with his Honor in that decision; but still it is necessary for us to consider more fully the question that has come before us. It has been decided in this Court, in *Hughes v. Biddulph*, by Lord Lyndhurst, and, since that, in the case of *Bolton v. The Corporation of Liverpool*^b, that parties were not bound to disclose all the papers and communications that are made in reference to an action or suit already instituted, or in the course of being instituted, and with a view thereto, but that that was the privilege of the suitor, and not of the solicitor. Here the communication is between an attorney and client, and the object of the motion was, to force on the party the production of papers laid by him or his town agents before counsel. I find no authority to sanction the violation of professional confidence in persons in a professional capacity, and with which confidence, but for the employment in their professional capacity, they would never have been entrusted. If they receive a communication touching a cause from their client, in a professional capacity, or if they themselves commit to paper what they knew only on relation of the client, they are not bound to produce that, either as parties or as witnesses. If this rule were confined to cases already commenced, it would exclude most professional communications. If the rule, not confined to suits commenced, were also extended to suits in contemplation, the protection would still be insufficient, for a party often consults without contemplating a suit.

"It would be most injurious in its consequences," said a common law Judge, in one of the cases to which I shall refer, "if an attorney were obliged to disclose what he was consulted about in his professional capacity." This is out of regard to the interests of justice, and for the better administration of justice, which cannot be carried on without professional men. If this privilege did not exist, every one would be thrown upon his own resources, and would not be desirous to consult a professional man, and lay before him the state of his affairs. Cases may arise which may appear to be exceptions from those terms. Thus a witness may be called, and knowing the case only as an attorney or as counsel, if he has not obtained his knowledge by being employed in it, he is not protected. The exceptions are, when the communications are made before employment or after employment; or where the person turned out not to be an attorney; or no facts were communicated but such as became known, or could be known, without professional employment; or the attorney was only a witness, leaving off the character of the attorney, and assuming another. But in no case can an attorney be compelled to disclose what knowledge he got in the capacity of attorney. I shall now advert to the series of cases supporting those propositions. The first is an anonymous case, in *Skinner*, 404, before Lord Holt, at *nisi prius*. There an attorney was called to prove a corrupt agreement, and he was excused, though he was not a counsel; for the ground of objection to his claim of privilege was, that he was not a counsel; and Lord Holt said that did not make any difference, and cited a case in which the same law was, as to a scrivener as well as an attorney. There are two cases in the fifth volume of *Espinasse's N. P. Cases*. In one of them, *Robson v. Kemp*, p. 52, Lord Ellenborough would not allow an attorney to be examined, as to matter communicated to him while acting as attorney for the party. In the case of *Brard v. Acherman*, in the same volume, Lord Ellenborough would not allow an attorney to be examined, as to a bill entrusted to him by his client. These were all *nisi prius* cases, to be sure; but now let us see the case of *Cromack v. Heathcote*, 2 Bro. & Bing. 4, the only decision in banc. on this view of the question. There it was held, that it made no difference that there was no suit pending, as the consulting professionally was the ground of the privilege; and Mr. Justice Richardson added, that he never heard of the rule being confined to an attorney employed in a cause. We come now to examine cases, in which the protection was refused; and they will be found to be exceptions to the rule. In *Cuts v. Pickering*, 1 Ventris, the Court thought a solicitor might be examined concerning the rasure of a clause in a will, supposed to be done by the defendant, to whom witness was solicitor; because it appeared that the matter, of which discovery was sought, was made to him before he was retained; otherwise, if he had been retained as his solicitor before. In *Lord Hey and Gold's case*, 10 Mod. an attorney was called to prove the time of executing a deed, and was objected to, on the ground that the disclosure would be betraying his client's secrets; the Court, recognizing the principle notwithstanding, overruled the objection, observing, that a thing of such a nature as the time of executing a deed, could not be called the secret of a client; that the witness might come to the knowledge of it, without his client's acquainting him. In *Studdy v. Sanders*, 2 Dowl. & Ry., which was the case of an objection to the testimony of the clerk of the attorney of one of the parties, the Court said, that the testimony of the fact, namely, who were parties to a particular Chancery suit, was not in the nature of a confidential communication between attorney and client, as being a fact easily cognizable to many other persons. Contrary to this, however, is the case of *The King v. Watkinson*, Strange, 1122, where, in a prosecution for perjury on an answer in Chancery, the defendant's solicitor was privileged from being sworn to the identity of the defendant, although it was a fact within his own knowledge, and not a secret committed to him by his client. This last case, therefore, I take not to be law: and Lord Mansfield said, in the case of *Doe v. Andrews*, Cowp. 846, that he knew an attorney obliged to prove his client's having sworn an answer, upon which he was indicted for perjury. An attorney has no privilege to refuse to give evidence of collateral facts; and whoever becomes attesting witness to an instrument, is obliged to give evidence of the execution: by his attestation he pledges himself to it; he becomes a public man, as Lord Ellenborough said, in one of the cases referred to. The privilege was refused in *Cobden v. Kendrick*, 4 T. Rep., and *Duffin v. Smith*, Peake's N. P. Cases; because the matter of which discovery was asked in these cases, was not a professional communication made to the attorney as attorney, in the way of instruction for the purpose of an action or a defence. In *Wilson v. Rastall*, it was ruled, that an attorney was bound to give up letters, because they were not given to him in a professional capacity. These cases are perfectly consistent with the rule, and so are all the authorities down to the year 1819, when Lord Tenterden decided that the privilege was restricted to communications with an attorney in a cause commenced, or about to be commenced, in the case of *Wadsworth v. Hamshaw*, which is given in a note, 2 Bro. & Bing., and is no where else reported. Lord Tenterden is there said to have cited a case from the midland circuit, to which he often referred, and said in *Clark v. Clark*, 2 Moody & M., that he had been more inclined than other Judges to restrict the privilege; and that in consequence of a cause to which his attention was called before he was at the bar, and which was an action of bribery, tried on the midland circuit, Lord Tenterden also thought the rule, as said to be laid down by him, in *Williams v. Mundie*, was narrower than he proposed it, and he allowed the privilege in *Clark v. Clark*. That was a com-

munication made to an attorney in his professional character, with respect to a matter then in dispute and controversy, although no cause was in existence with respect to it; and such a communication is privileged. "Lord Wynford, in the case of *Broudy v. Pitt*, 1 Moo. & M., adopts the doctrine ascribed to Lord Tenterden in *Williams v. Mudie*, but made no decision; but his Lordship said, that although by law communications to physicians and clergy are not protected, yet he would never allow a clergyman to be examined before him as to communications made to him in time of sickness. When so eminent a Judge as Lord Tenterden is said in a case narrowing the protection, to have given considerable attention to the subject, it was worth inquiring whether the proposition in *Wordsworth v. Hanshaw* and *Williams v. Mudie* were given by himself, or by the reporters; and it was with that view that I have stated at some length his Lordship's observations in *Clark v. Clark*, the last case decided by him on this subject. If the same doctrines were followed, the case of *Brenwell v. Lucas* would be put an end to at once. That case closes the examination which I proposed to make of those which come within the doctrine of what I call apparent exceptions. It is reported in 2 Barnw. & C. 745. Scott, an attorney, being consulted by Noakes, as to whether it was safe for him to go to a meeting of his creditors, advised him to remain in his office. Lord Tenterden, in his decision upon the question whether Scott could be examined as to that in an action by the assignees of Noakes, was of opinion that it was not a professional communication. That decision is altogether somewhat refined. The great importance of this question, both at law and in equity, made me go at length into it; the rule is the same in both. The cases are not departed from in my decision: I affirm the order of the Vice-Chancellor; or, the proper way is to make no order at all, but dismiss the motion. *Greenhough v. Gaskell*, Westminster, January, January 31, 1833.—L. C.

Note.—No reference was made in the argument or judgment to several cases, which are most pertinent to the point in the above motion; as *Thomas v. Herne*, 2 Esp. 695, in which Lord Kenyon was of opinion that an attorney ought not to be compelled to answer any question as to matter communicated to him as an attorney; although the client is not a party to the suit. *Rea v. Withers*, 2 Campb., in which Lord Ellenborough said, an attorney is not at liberty to disclose what is communicated to him confidentially by a client, though the latter be not in any shape before the Court. See also to the same effect, *Copeland v. Watts*, 1 Starkie, 95; *Gainsford v. Grammar*, 2 Campb. 578; and *Parkhurst v. Lowten*, 2 Swanston.

King's Bench Practice Court.

EJECTMENT.—SERVICE OF DECLARATION.

When reading over and explaining, a declaration in ejectment may be dispensed with.

Dowling moved for judgment against the casual ejector. The person serving the declaration did not read over and explain the nature of the declaration to the tenant in possession; but the latter did read it over, and said he understood the nature of it.

Parke, J. held the service sufficient.

Rule granted.—*Doe d. Jones v. Roe*, Jan. 12th, 1833. K. B. P. C.

ENTITLING OF AFFIDAVITS.

To set aside a fa. sa. issued against a defendant in a wrong name, the affidavits must be entitled in the correct name, sued in the wrong name.

Erle showed cause against a rule obtained by Watson, to set aside a *ca. sa.*, and discharge the defendant out of custody, on the ground of the misnomer of the defendant. He took a preliminary objection, that the affidavits in support of the rule were improperly entitled. They were entitled *Benjamin Thorpe* against *John Hook*; and it was alleged in the affidavit, that the bill was filed and final judgment had against the defendant, by the name of *James Hook*; but the *ca. sa.* was issued against him in the name of John Hook. The bill and judgment being against "James," the affidavits ought to have been so entitled. He cited two cases, *Forbes v. Diemar*, 7 T. R. 661; and *Doe d. Spencer v. Want*, 8 Taunt. 647, that affidavits must be properly entitled, with the christian names.

Watson, in support of the affidavits, contended, that they ought to be entitled according to the *ca. sa.*: the Court could look no further than that; and the affidavits agreed with the *ca. sa.*

Littledale, J.—There must have been a judgment. You can't suppose a *ca. sa.* issued without one. The officer would not allow the writ without seeing the judgment. Why not entitle them as you would on a plea in abatement—*A. B.* sued by the name of *C. B.* The affidavits are wrongly entitled. You must move again.

Rule refused.—*Thorpe v. Hook*, Nov. 9th, 1832. K. B. P. C.

[Erle subsequently moved to amend the *ca. sa.*, and the *scire facias* issued upon it, by substituting the name of James for John, according to the judgment.

The Court granted a rule nisi.]

Court of Exchequer.

PRACTICE.—IRREGULARITY.

Process served on a wrong person is a nullity, and a rule obtained for setting aside the proceedings was discharged with costs.

Curwood, on a former day, had obtained a rule to set aside proceedings for irregularity.

The rule was obtained at the instance of Noel Fox. In answer to the rule, it was now sworn, that a summons having been taken out, directed to Alexander Fox, the real defendant, it was by mistake served on the son, Noel Fox; but no further proceedings had been taken. *Curwood* endeavoured to support his rule; and stated, that at the time of service, the son said he was not Alexander, but Noel Fox; and afterwards he wrote, enquiring whether they meant to proceed, to which they made no answer.

Per Curiam.—You have brought them here unnecessarily. The copy served on you was directed to another person. No proceedings have yet been taken against you. The rule must be discharged with costs.

Rule discharged with costs.—*Newstead v. Fox*, Nov. 23d, 1832. Exch.

DEMURRER.—PLEADING.—PRACTICE.

A demurrer, though trivial, cannot be treated as a nullity, where the defendant is not under terms to plead issuably; but if he is, he cannot demur specially; though where good grounds are stated, the Court will sometimes allow the special causes to be struck out.

This was an action for maliciously holding to bail. The declaration contained several counts, and was demurred to specially. The plaintiff having signed judgment for want of a plea, *Mansel* had obtained a rule to set it aside, against which

Maule now shewed cause. The defendant obtained time to plead, on the usual terms. The demurrer is special, and the causes trivial, occupying several sheets of paper: we therefore signed judgment for want of a plea.

Mansel, in support of the rule.—It was competent for us to demur specially, if the grounds are fair and substantial: he cited *Langford v. Waghorn*, 7 Price, 670; that was trespass for entering plaintiff's apartments; to which the defendants pleaded a seisin in fee in one, and a demise by him to a third person, and that the other defendant acted as his servant. The plaintiff replied *de injuriâ*, and the defendant demurred, assigning a special cause that the replication traversed all the matters in the plea, instead of being confined to one only; and this Court held, that being a fair demurrer, the defendant, though under terms, was not precluded from pleading such a demurrer.

Bayley, B.—A special demurrer is not an issuable plea; but, if there are good grounds, the Court will sometimes strike out the causes.

Mansel.—We do not admit being under terms.

Maule.—We mean, we consented to give time on the usual terms.

Mansel.—The rule is not drawn up so, and you are bound by the rule. After a rule to rejoin, it is too late to sign judgment. The demurrer was on July 2; they waited till this term, and then we gave a rule to rejoin.

Bayley, B.—If they are not under terms, the demurrer, though trivial, cannot be treated as a nullity; otherwise, if they are.

[It was ultimately referred to the Master, to ascertain at what time the words in the rule, (which was produced) "on the usual terms," were struck out, and by whom].—*Nanny v. Kenrick*, Nov. 23d, 1832. Exch.

AFFIDAVITS BEFORE WHOM SWORN IN SCOTLAND.

It is no objection to an affidavit sworn in Scotland, that it is taken before a Justice of the Peace, and not before a Lord of Session.

On showing cause against a rule, one of the affidavits appeared to be sworn at Lanark in Scotland, before a justice of the peace there.

Platt objected to it on that ground; contending that it ought to have been sworn before a lord of session; but,

Per Curiam.—It is quite sufficient. Affidavits are often sworn so.—*Watson v. Williamson*, Nov. 23d, 1832. Exch.

IMPARLANCE.—WAIVER.

If the writ and declaration are of different terms, the defendant is entitled to an imparlance.

On shewing cause against a rule for setting aside a judgment, and all subsequent proceedings, for irregularity, it appeared that the process and appearance were of Hilary term, and the declaration of Trinity term. The defendant claimed an imparlance; but the plaintiff took no notice of the claim, and signed judgment as for want of a plea. The question therefore was, whether, under Rule 7. of T. T. 1 W. 4, the defendant was entitled to an imparlance.

Lord Lyndhurst.—The defendant was clearly entitled to an imparlance. He is only deprived of that right, by the new Rule, in those cases in which the writ, appearance, and declaration, are all of the same term. Here the writ and appearance were of one term, and the declaration of another. The judgment was therefore irregular.

Rule absolute.—*Whally v. Barnet*, Nov. 23, 1832. Exch.

NOTES OF THE WEEK.

House of Lords.

LUNATIC COMMISSIONS.

This Bill is to be read a third time on Monday next.

House of Commons.

SUFFOLK ASSIZES.

A Bill to remove the Suffolk Summer Assizes from Bury St. Edmunds to Ipswich, has been ordered to be brought in by Mr.

Wason, Lord Henniker, and Mr. James Morrison.

PARISH REGISTERS.

Mr. Wilks has renewed the notice he gave last session, for a Select Committee to consider the general state of Parochial Registries, and the Laws relating to those Registries, and the Registration of Births, Baptisms, Marriages, Deaths, and Burials, in England and Wales.

This measure extends much further, it will be observed, than that of Lord Nugent, which was limited to the Registration of Births, and of which we gave an analysis, Vol. 3. p. 273.

CORPORATIONS.

Lord Althorp has moved for a Committee to inquire into the state of existing Corporations; and Mr. Jervis has therefore withdrawn his Bill on the subject.

REAL PROPERTY BILLS.

The Solicitor-General has brought in five of the Bills recommended by the Real Property Commissioners. 1.—The Fine and Recovery Bill. 2.—The Statute of Limitations Bill. 3.—The Descent Bill. 4.—The Dower Bill. 5.—The Curtesy Bill. As these Bills will now in all probability become the law of the land, we shall lay them before our readers in a series of separate articles. The General Registry Bill is not to be made a Government measure; it will be brought in by Mr. W. Brougham.

USURY LAWS.

Lord Althorp, in answer to a question, stated, it was not the intention of Government to bring forward any specific measure on this subject.

LAW OF PATENTS.

The motion for this Bill has been deferred till the 19th instant.

VACANT SINECURE.

The death of the Master of the Report Office will enable the Government to effect a saving of nearly 5000*l*. We trust this may be done.

EXCHEQUER EQUITY SITTINGS.

These sittings are adjourned.

The Lord Chief Baron will sit in Gray's Inn Hall on Tuesday next the 19th instant, at a quarter before ten, for the purpose of giving judgment in *Leigh v. Freshfield*, (as

to Costs of Corporation of Liverpool in *Spencer v. Jenkinson*, and *Jenkinson v. Endo*), and as to Minutes of Decree in *Small v. Attwood*.

ANSWERS TO QUERIES.

State of Property and Conveyancing.

WILL.—TRUST ESTATE. P. 228.

The clause set forth was adequate to pass the legal estate possessed by the testator, although he had no beneficial or real interest therein; and especially after reading the authorities thereon, the point appears to me fully settled—that under a general devise, estates held by the deviser in trust will pass, unless, from the context of the will, or from a disposition not consistent with an expression as before declared right, and the nature of trust property, it can be collected that he did not mean to pass such estates. See *Wall v. Bright*, 8 Ves. On referring to the case of *Lord Braybrooke v. Inskip*, 8 Ves. 435, it will be seen that Lord Eldon said, he knew of no case that states as the rule that trust estates should not pass under general words, unless an intention that they should not pass appears; and he inclined to think they would pass, unless from expressions in the will, or purposes or objects of the testator, it could be collected that he did not mean they should pass. Lord Kenyon, in *Roe d. Reake v. Reake*, held clearly, that under a dry naked devise of all deviser's estates, a trust would pass, unless there was some denotation of intention that it should not pass. The way of reasoning with respect to trust estates has been this: that the party, having no beneficial interest, it can hardly be considered his for purposes of disposition, and to treat it as his own would be quite inconsistent with its nature. He has no right to dispose of it, except by the direction of his *cestui que trust*, or for the objects for which it is confided to him. When the devise is not consistent with the trust, to suppose he meant it to pass, is to imagine he was taking upon himself to do an act of injustice; this the Court will not presume, and therefore says he did not intend to include it. *Attorney-General v. Vigor*, 8 Ves. 276. *Ex parte Morgan*, 10 Ves. 103.

J. J.

DEVISE.—FREEHOLD P. 147, 162, and 211.

In answer to this query, and especially after reading that of C. E. W., which is inconclusive on the point, and that of Z., merely contradicting his statement as to the word "heirs" not being requisite to a devise by will, I am led to answer the same, submitting my opinion to the impartial consideration of your correspondents, and courting argument if the same shall be found inconclusive. C. E. W. observes, "that the intention of the testator, as well as the wording of the will, must be considered." This is always the case; and the most liberal construction is allowed. The

word "heirs," not being introduced, cannot affect the devise, neither, as Z. observes, is it absolutely requisite; and the authority quoted bears him out in his statements; but it is far the more advisable mode to use the word "heirs," as well as in a grant or feoffment, in that case following the technical expression of the law. That the word "property," standing alone, is sufficient to carry the fee simple in the premises, see the *dicta* of *Rooke*, J. 2 New. Rep. 221. And also the very luminous judgment of my Lord *Ellenborough*, in the case of *Doe* lessee of *Wall v. Langlanas*, 14 East Rep. 372, where he observes, "that property is a term sufficient to pass real estate, when used in a last will, is not disputed, and the question is, whether the generality of its signification be restrained by any other words in the same instrument, or whether, from the whole texture of the will, or from any particular clauses in it, a more confined sense can be made appear." See also *Doe v. Lanichbury*, 11 East, 290; *Doe v. Roper*, *ib.* 518, to the same effect. After the above unimpeached authorities, I apprehend no further question can possibly arise, and that the word "property," as used in this query, is competent to pass the hereditaments to the testator's brother John absolutely. J. J.

Common Law.

MARRIED WOMAN. P. 228.

1. The separate property of a *feme covert* is not liable to the discharge of her general engagements; *Greatly v. Noble and others*, 3 Madd. 79. T. T. P.

2. A wife's separate property is not subject to her general engagements. To bind such property, it is necessary that she should do some act indicating an intention specifically to charge it. See *Roper on Husband and Wife*, Vol. 2, p. 241.

In an answer of P.'s, in last week's number, he says, the proviso against debts, management, &c. of the husband, will be useless, unless there be a trustee appointed. He should know, that equity never suffers a trust to fail for want of a proper person to execute it; and that, in the particular case in question, the husband is considered as a trustee for the wife. W. G. C.

3. Yes, if she executes any security for payment. *Mayor v. Lansley*, 1 L. O. 301. There must be a *writing*: a letter will do. *Murray v. Bailee*, *ibid.* 174. Moral or general obligations will not. *Smart v. Kirkwall*, 3 Mad. 289. C. S.

Practice.

PROCURATION FEE. P. 163.

The esteemed practice of the profession is, that the procuration fee shall belong to the solicitor of the lender. J. J.

QUERIES.

Practice.

STATUTE OF LIMITATIONS.

A. contracted a debt with B. on the 30th of December, 1826; in 1828, 1l. was paid on account. Can B., in 1833, sue A. for the balance, and recover? R. M.

NEW RULES.—COSTS.

A bill of exchange being accepted, for the accommodation of a friend, who afterwards left the country; the acceptor was arrested, without having previously had any notice that the bill had not been duly met when due; and on the following day, she tendered 20l., the debt, and 3l. 3s. costs, the amount as indorsed on the *capias*; but which the solicitor refused to accept, stating, that there were other parties to the bill, and he had served them all with process, and demanded twelve guineas; a summons was then served to stay proceedings *against all parties*, on payment of the debt, and 3l. 3s. the costs. The Judge was of opinion, that the amount of the costs was a question for the Master to decide, and gave the usual order. The Master taxed the costs of all parties at 10l. Now I submit, that in order to entitle the solicitor to recover more than the 3l. 3s. for costs, he should indorse what the amount of the costs against *all* the parties are, upon the back of the *capias*, issued against the acceptor. J. C.

PRACTICE.

How soon after arrest is the plaintiff entitled to an order to return the *capias*? Or is any order necessary? J. G. B.

Law of Landlord and Tenant.

ARREARS OF TAXES.

Is a landlord liable at law to pay assessed taxes, due by his late tenant, who deserted the premises? Can, in fact, a distress be made on a new tenant's goods for an old tenant's debt? A REGULAR SUBSCRIBER.

Law of Property and Conveyancing

COVENANT.—EVIDENCE.

A. demises to B. for a term. B. assigns to C. An action is commenced by A. against C. (who is in actual possession) for breach of the covenants in the lease, to pay rent and to repair. First.—Must A. produce the assignment on the trial, and prove C.'s execution? If so, how is it to be obtained? Second.—Is secondary evidence of the contents of the assignment sufficient to support A.'s action? Third.—Is a general admission by C., by letter, of his liability to pay rent, sufficient to support the action? Fourth.—If C. is *not* in actual possession, is secondary evidence admissible? If not, how can A. obtain the production of the assignment? J. L.

CHOSE IN ACTION.—ASSIGNMENT.

Will the assignment for valuable consideration of the wife's choses in action by the husband, be considered a sufficient reduction into possession by him, so as to defeat her right to them by survivorship? MANCUNIENSIS.

EXECUTION.—PARTNERSHIP.

Will the sale of partnership effects, under a separate execution against one partner, be *ipso facto* a dissolution of the partnership, or will it merely be a cessation of that particular partner's interest? MANCUNIENSIS.

Laws of Attorneys.

ATTORNEY AND CLIENT.

A piece of ground having been sold, in lots, by public auction, *A.* became the purchaser of some of them, and by the conditions of sale he precluded himself from inquiring into the title previous to the time the vendor purchased (1823). At the time the agreement for the purchase was signed, *A.* was told by the auctioneer, that there was a slight difficulty about the title, but that it would cease in four or five years; and *A.* being ignorant of such matters, took for granted it would be so. *A.* employed *B.*, as his solicitor, to investigate the title and prepare the necessary conveyance, which he did accordingly, but said nothing to *A.* of the state of the title. *A.* has since required an advance on the estate, which he is unable to procure, on the ground that the title is not marketable. Is *B.* liable for any loss, from the deterioration in the value of the property?

AN OLD SUBSCRIBER.

MISCELLANEA.

ANECDOTES OF LORD ERSKINE.

HE was fond of indulging in a joke at the expense of a witness, but not in any way to offend or affect his character, unless he was so instructed. A witness was put into the box, who travelled to get orders for the plaintiff's house in London. This description of persons go indiscriminately by the name of riders and travellers, but they most affect the latter title. Erskine got up to cross-examine him: "You are, sir, I understand, a rider?"—"A traveller, sir," was the reply. "Pray, sir," says Erskine, "are you addicted to that failing usually imputed to travellers?"

If he was induced to make a personal observation on a witness, he divested it of asperity, by giving it in the dress of a joke. In a cause at Guildhall, brought to recover the

value of a quantity of whalebone, a witness was called, of most impenetrable stupidity. There are two descriptions of whalebone, of different value, the long and the thick. The defence was, that the plaintiff had delivered that of inferior quality, and yet charged it at the price of the best. When the witness was put into the box, Erskine, who was counsel for the defendant, tried to prove his case by his evidence. His stupidity baffled every attempt he made to prevail on him to do so: He confounded thick whalebone with long, in such a manner, that Erskine was forced to give it up. "Why, man," says he, "you don't seem to me to know the difference between what is thick and what is long. Now, I'll tell you the difference: You are a thick-headed fellow, and you are not a long-headed one."

In an action on a policy of insurance, the case turned upon the fact of whether the ship insured was in safety on a certain day, when the policy was effected, or not. The mate of the ship was called by Erskine for the defendant. He was asked, Whether on the day in question the ship had not met with very foul weather, and was in jeopardy? The witness repeated the words "in jeopardy," in a manner which evidently shewed that he did not understand them. As it was an important fact for his client, Erskine made every attempt to get an answer, but the witness remained silent. At last, impatient of his dullness, "Pray, sir," says he, "are you thinking in what part of the world is the Port of Jeopardy? Perhaps you would wish for a map to find it out?" I really believe that he was not mistaken in his conjecture of what was passing in the witness's head.—*From Fraser's Magazine.*

THE EDITOR'S LETTER BOX.

WE have received three letters in continuation of the discussion regarding the Education and Examination of Attorneys previous to their admission to practice; but must defer them for the present.

The proposal of E. W. is novel, but we question its feasibility. We will mention the subject in the proper quarter.

We are interested by the letter of C. S., and will make all the inquiries for him in our power. We cannot, at the moment, advert to the authorities he mentions in his second letter.

"Mancuniensis" must yield a little to the wishes of other Subscribers, who are interested in that which he objects to.

The Queries and Answers of "A Legatee;" V. C.; and "a Country Subscriber;" have been received.

The Legal Observer.

Vol. V. SATURDAY, FEBRUARY 23, 1833. No. CXXVI.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

THE SOLICITOR GENERAL'S REAL PROPERTY BILLS.

WE think that the present state of the House of Commons is, in one respect, to be deplored. It has been generally considered the great boast of our constitution, that all parties and interests in the state should be represented. We regret, therefore, that the chief Conservative lawyers have been excluded from the present Parliament. We do not say this from any feeling of favour to that party; but we think that in effecting any considerable change in the law, it is of the greatest importance to the public welfare that both sides should be heard; that it is not well done, if “done quickly;” that it should be severely scrutinized; and that, above all other things, it should not be taken up as a party measure. In the discussion of the important legal measures which will be brought forward in this Parliament, we are sorry, therefore, to find that, in the House, all the speeches will probably be on one side; that there will be as great an eagerness to undo, as formerly to do. We again express our regret for the common interest, that we do not find Sir Edward Sugden or Sir Charles Wetherell, Mr. Knight, or Mr. Pemberton, in their former places,—as we look in vain, in the present legal ranks, for any persons to supply their places. Sir James Scarlett never troubles himself with such matters—the knot is not sufficiently political to call for his interference; and Mr. Pollock, being himself

pledged, as a Common Law Commissioner, to various reforms of his own, can hardly come forward to oppose those of others. Among the new legal members in the House, we find but little information, less experience, and no inclination to use what they possess, in the temperate discussion of any change that may be proposed. In general, they are young men, eager only to outstrip each other in the pursuit of political novelty, and seeking but for an opportunity for a “splash.”

These observations have been unwillingly forced from us, by the manner in which the Solicitor General's Bills on Real Property were introduced on Thursday, the 14th instant. They were brought in, almost as of course, by that learned gentleman, and, with the exception of a single observation from Mr. O'Connell, provoked no further discussion. Now this is certainly not the manner in which measures so important should have been treated. They are intended to effect alterations of considerable extent. They should have been explained again to the House. A spirit of proper caution should have been shewn; and we should then have looked forward with much greater satisfaction to the result. Things, however, having taken this course, we must presume that the principle of these bills is admitted. We trust, at any rate, that the details will not be slurred over; and it will be for us to use our best faculties and endeavours to examine them, and to do our utmost to point out their practical effect.

With respect to the present bills, we see

no reason to alter the opinion we expressed concerning them nearly two years ago*. Three of the intended measures we cordially approve. They are intended to remedy defects in our laws long felt; we mean, the Bills for making an alteration in the law of Descent, of Dower, and of Curtesy. Thus, there might be good reasons under the feudal system why the father should not inherit to the son, and why half blood should never inherit; but they have ceased to exist with the system in which they originated; and their rules were otherwise inconvenient, and mischievous in their operation: the bill for altering them is therefore a good and proper one. So also the law respecting Dower, was so very ill suited to the feelings and tastes of the present time, that it was constantly evaded; and the evasion was permitted by the law, although the plans adopted were all more or less defective. This state of things, therefore, has very properly been fixed upon for judicious alteration. The law as to Curtesy has long been considered anomalous and unsatisfactory. We rejoice in its intended change. The Fine and Recovery Bill presents greater difficulty. It is perfectly true that these assurances are antiquated, fictitious, and useless in themselves; that they are expensive, and tend therefore to burthen the alienation of property; but it must be recollected that they are greatly interwoven with our laws, and that the cutting them away will produce more embarrassment than is generally supposed. On the whole, however, we approve of the principle of their abolition, reserving to ourselves the examination of the deeds, which are to be substituted in their room; and we may observe, that as there must necessarily be a substitute for them, the practitioner will suffer little, if at all, by this change; it will be the legal sinecurist who will feel it.

The fifth bill, however, the new Statute of Limitations as to Real Actions, appears to us a most dangerous and ill-advised measure. Let it be admitted that the present period of *sixty* years is too long, and that the law on this head is very defective; does it follow, that we are at once to reduce the time, in which all claims to land are to be barred to *twenty* years? Do we not all recollect in practice cases in which this restriction would work the greatest injustice? It clashes directly with Lord Tenterden's

Prescription Act (2 & 3 W. 4, c. 71; see ante 1), and appears to us to be opposed to the first principles of justice; but we shall refrain from any further remarks on it until we have the new bills (which have not at present reached us), when we shall enter fully into their details.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XLI.

ASSIGNEES OF BANKRUPT.

THE following case decides several important points as to assignees of bankrupts. 1. That the commissioner has a discretion in his choice, and is not a mere returning officer. 2. That if creditors sign resolutions, authorizing assignees to object to do certain acts *as assignees*, they cannot afterwards question the validity of their appointment. And, 3. It would seem that the appointment is not complete until the declaration of appointment is signed by the commissioner.

This was a petition relative to the due election of assignees. The facts were, that at a meeting of creditors, appointed for the proof of debts, and for the choice of assignees, all the creditors then present, except Samuel Adams and Glyn signed the usual memorandum for the nomination of the petitioners, Nash, Usborne, and Wood, as assignees. Mr. Glyn was also applied to to sign it, but refused. Glyn was requested to subscribe another memorandum, signed by Adams alone, and by which Adams nominated as assignees William Cater and Robert Morecock (who were in fact the assignees, ultimately adopted and appointed by the commissioner). Glyn, however, refused to sign this, and left the meeting, declaring he would not vote at all in the choice. The meeting took place at 12 o'clock, on the 20th January; and Glyn left the meeting about 2 o'clock. The business of the meeting proceeded till four o'clock, when all the creditors of the bankrupts, then present, who were entitled to vote in the choice of assignees, having voted, the commissioner said that the choice of assignees was ended, and he required the lists or memorandums in favor of the respective nominations of assignees to be handed to him, in order that the same might be called over, and that he might certify on whom the choice had fallen. The memorandum signed by Adams was signed by no other creditor; and his debts thereon amounted to 27,419l.

* See 1 L. O. 401. We have already reprinted most of these bills as originally introduced. See 2 L. O. 300, 310, 323.

§. 11d., whilst the debts of the creditors, who signed the other memorandum nominating the petitioners, amounted to 28,562*l.* 9*s.* 5*d.* Mr. Smith, the petitioning creditor, and solicitor to the commission and to Adams, purposely (as stated in the petition) delayed the meeting for some time, and in the mean time sent to Mr. Glyn to urge his return, in order to vote with Adams in favor of Cater and Morecock, whose debt, when added to Adams's (printed in the report, by mistake, Wyatt's) exceeded the other creditors by 232*l.* 15*s.* 6*d.* Mr. Glyn returned to the meeting about twenty minutes after 4 o'clock, and signed the memorandum in favor of Cater and Morecock, which was tendered to the commissioner. It was objected, on behalf of the other creditors, that Glyn ought not to be allowed to sign the memorandum, inasmuch as the commissioner had, at 4 o'clock, declared the choice was ended, and that the petitioners had been properly chosen; but the commissioner decided that Glyn was entitled to vote, and declared that Cater and Morecock were duly chosen assignees. The petition prayed that the petitioners might be declared duly chosen assignees, and that Cater and Morecock might be ordered to deliver up to the petitioners the commission and proceedings, and the estate and effects of the bankrupt (and other similar incidental directions), or that a new choice might take place. The affidavits in support of, and in opposition to the petition also stated, that the commissioner had, in a prior part of the day, stated that the meeting would terminate at 4 o'clock; and before the return of Glyn, the commissioner, after looking over the two memorandums, rejected the one signed by Adams, and, holding up the other, said, "this is the choice." At the moment that the commissioner was about to sign the last mentioned memorandum, Glyn, however, returned, and signed the rejected memorandum. The commissioner had not finally determined or decided upon the choice of assignees; nor signed any choice previous to Glyn signing the nomination in favor of Cater and Morecock; and upon Glyn so signing the same the commissioner allowed it, and placed his signature in the margin, signifying his approval thereof, and declared Cater and Morecock to be duly chosen and elected assignees under the commission, and appointed the official assignee to act with them. A memorandum to that effect was also entered by the registrar in his book. It appeared that some time subsequent to Cater and Morecock being declared assignees by the commissioner, all the petitioners had signed a memorandum, whereby they authorized Cater and Morecock, as assignees, to do various particular acts in the management of the estate, such as to the payment of bills, &c. and also to act generally for the benefit of the estate, whereby the petitioners had fully recognized them as the assignees. Notwithstanding this, about a fortnight after they presented the present petition, with a view to re-open the choice of assignees.

Erskine, C. J. said,—Before the 6 Geo. 4, nothing was necessary towards the choice of as-

signees but the act of the creditors. As soon as that was declared, the commissioner, as a matter of course, was bound to execute the assignment to the assignees. By the 6 Geo. 4, c. 16, §§ 45 and 63, a power is given to the commissioner to reject assignees if they are unfit, in his judgment, to hold the office. But yet that power must only be exercised after the choice. By the 1 & 2 W. 4, c. 56, §§ 25 and 26, a new term is altogether used. There the estate vests, without assignment, "on the appointment;" and, of course, the estate vests from the date of that appointment; and the question is, what is that appointment? Suppose that before the appointment is complete the ratification of the commissioner is necessary; yet the choice must be complete before such ratification can take place, in the same way as before the exercise of the power of rejection. But I think we have nothing to do with that question; for the creditors had power to prove, and consequently to act in the choice, during the whole of the meeting. The duration of it, in my opinion, rested entirely on the judgment of the commissioner; and when I find that he has signed the formal certificate of the appointment of the assignees *de facto*, I rather rest my judgment on that, than the mere informal declaration of the meeting being ended in favor of the petitioners. I therefore think, that this petition must be dismissed; and as the circumstance of the resolutions of the creditors adopting Cater and Morecock as assignees has come before us, it must be dismissed, with costs. The other Judges concurred. *Ex parte Nash and others*, 1 Dea. & Ch. 445.

CHANCERY REFORM.

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No. XLI.

ASSIGNEES OF BANKRUPT.

THE following case decides several important points as to assignees of bankrupts. 1. That the commissioner has a discretion in his choice, and is not a mere returning officer. 2. That if creditors sign resolutions, authorizing assignees to object to do certain acts as *assignees*, they cannot afterwards question the validity of their appointment. And, 3. It would seem that the appointment is not complete until the declaration of appointment is signed by the commissioner.

This was a petition relative to the due election of assignees. The facts were, that at a meeting of creditors, appointed for the proof of debts, and for the choice of assignees, all the creditors then present, except Samuel Adams and Glyn signed the usual memorandum for the nomination of the petitioners, Nash, Usborne, and Wood, as assignees. Mr. Glyn was also applied to to sign it, but refused. Glyn was requested to subscribe another memorandum, signed by Adams alone, and by which Adams nominated as assignees William Cater and Robert Morecock (who were in fact the assignees, ultimately adopted and appointed by the commissioner). Glyn, however, refused to sign this, and left the meeting, declaring he would not vote at all in the choice. The meeting took place at 12 o'clock, on the 20th January; and Glyn left the meeting about 2 o'clock. The business of the meeting proceeded till four o'clock, when all the creditors of the bankrupts, then present, who were entitled to vote in the choice of assignees, having voted, the commissioner said that the choice of assignees was ended, and he required the lists or memorandums in favor of the respective nominations of assignees to be handed to him, in order that the same might be called over, and that he might certify on whom the choice had fallen. The memorandum signed by Adams was signed by no other creditor; and his debts thereon amounted to 27,419l.

^a See 1 L. O. 401. We have already reprinted most of these bills as originally introduced. See 2 L. O. 300, 310, 323.

§s. 11d., whilst the debts of the creditors, who signed the other memorandum nominating the petitioners, amounted to 28,562*l.* 9*s.* 5*d.* Mr. Smith, the petitioning creditor, and solicitor to the commission and to Adams, purposely (as stated in the petition) delayed the meeting for some time, and in the mean time sent to Mr. Glyn to urge his return, in order to vote with Adams in favor of Cater and Morecock, whose debt, when added to Adams's (printed in the report, by mistake, Wyatt's) exceeded the other creditors by 232*l.* 15*s.* 6*d.* Mr. Glyn returned to the meeting about twenty minutes after 4 o'clock, and signed the memorandum in favor of Cater and Morecock, which was tendered to the commissioner. It was objected, on behalf of the other creditors, that Glyn ought not to be allowed to sign the memorandum, inasmuch as the commissioner had, at 4 o'clock, declared the choice was ended, and that the petitioners had been properly chosen; but the commissioner decided that Glyn was entitled to vote, and declared that Cater and Morecock were duly chosen assignees. The petition prayed that the petitioners might be declared duly chosen assignees, and that Cater and Morecock might be ordered to deliver up to the petitioners the commission and proceedings, and the estate and effects of the bankrupt (and other similar incidental directions), or that a new choice might take place. The affidavits in support of, and in opposition to the petition also stated, that the commissioner had, in a prior part of the day, stated that the meeting would terminate at 4 o'clock; and before the return of Glyn, the commissioner, after looking over the two memorandums, rejected the one signed by Adams, and, holding up the other, said, "this is the choice." At the moment that the commissioner was about to sign the last mentioned memorandum, Glyn, however, returned, and signed the rejected memorandum. The commissioner had not finally determined or decided upon the choice of assignees; nor signed any choice previous to Glyn signing the nomination in favor of Cater and Morecock; and upon Glyn so signing the same the commissioner allowed it, and placed his signature in the margin, signifying his approval thereof, and declared Cater and Morecock to be duly chosen and elected assignees under the commission, and appointed the official assignee to act with them. A memorandum to that effect was also entered by the registrar in his book. It appeared that some time subsequent to Cater and Morecock being declared assignees by the commissioner, all the petitioners had signed a memorandum, whereby they authorized Cater and Morecock, as assignees, to do various particular acts in the management of the estate, such as to the payment of bills, &c. and also to act generally for the benefit of the estate, whereby the petitioners had fully recognized them as the assignees. Notwithstanding this, about a fortnight after they presented the present petition, with a view to re-open the choice of assignees.

Erskine, C. J. said,—Before the 6 Geo. 4, nothing was necessary towards the choice of as-

signees but the act of the creditors. As soon as that was declared, the commissioner, as a matter of course, was bound to execute the assignment to the assignees. By the 6 Geo. 4, c. 16, §§ 45 and 63, a power is given to the commissioner to reject assignees if they are unfit, in his judgment, to hold the office. But yet that power must only be exercised after the choice. By the 1 & 2 W. 4, c. 56, §§ 25 and 26, a new term is altogether used. There the estate vests, without assignment, "on the appointment;" and, of course, the estate vests from the date of that appointment; and the question is, what is that appointment? Suppose that before the appointment is complete the ratification of the commissioner is necessary; yet the choice must be complete before such ratification can take place, in the same way as before the exercise of the power of rejection. But I think we have nothing to do with that question; for the creditors had power to prove, and consequently to act in the choice, during the whole of the meeting. The duration of it, in my opinion, rested entirely on the judgment of the commissioner; and when I find that he has signed the formal certificate of the appointment of the assignees *de facto*, I rather rest my judgment on that, than the mere informal declaration of the meeting being ended in favor of the petitioners. I therefore think, that this petition must be dismissed; and as the circumstance of the resolutions of the creditors adopting Cater and Morecock as assignees has come before us, it must be dismissed, with costs. The other Judges concurred. *Ex parte Nush and others*, 1 Dea. & Ch. 445.

CHANCERY REFORM.

IN a former number*, we gave a full analysis of a bill "for the Improvement of the Administration of Justice in the High Court of Chancery;" which was printed, in pursuance of the speech of the Lord Chancellor, delivered at the close of the last session of Parliament, and embodying most of its propositions. Another bill has since been printed, and an analysis of it has appeared in some of the public prints. We are informed, however, that it is not by any means perfect, and has been published contrary to the wishes of the Lord Chancellor. Indeed until some specific plan is brought forward, and steadily adhered to, we feel some difficulty in knowing how to deal with these projects. We have now had at least three different bills brought forward, as the final resolutions on the subject; and at this rate, we shall have a fresh one every six

* Vol. IV. 343, 369. See the Speech of the L. C., *ante*, 247.

weeks. This constant alteration is not in favor of the success of the proposed reform. The constant tampering with our laws, and the rumours of change, are necessarily prejudicial. The public mind becomes unsettled, and the practitioner is much embarrassed in the advice he gives to his clients.

We shall not, therefore, reprint this bill at length, until it is either formally brought forward by the proper authorities, or at least receives their sanction. It will be proper, however, to put our readers in possession of the points in which this last bill differs from the last but one, although we do not pledge ourselves for their accuracy. These differences consist of additions and omissions. The additions are the abolition of the Six Clerks' Office. This, it may be remembered, we have always enforced; and it would seem, that some recent suggestions of ours have not been unattended to^b. Instead of the Six Clerks' Office, it is proposed to substitute a new Filazers' Office, consisting of six Filazers and eight Clerks; in which all proceedings in Chancery shall be filed, and decrees and orders be enrolled. These Filazers are to tax costs; their business is to be conducted in the present Six Clerks' Office; and their clerks are to receive fees, to be settled by the Lord Chancellor.

It is also to be provided, that new writs shall issue, the forms of which are to be settled by the Lord Chancellor, Master of the Rolls, and Vice-Chancellor.

The proposed alterations in the Registrar's Office, are nearly the same as in the former bill.

As to the Masters, it empowers them to hear applications from time to time, and to answer to such other interlocutory matters, as the Lord Chancellor, with the advice of the Master of the Rolls and Vice-Chancellor, shall appoint, subject to appeal in certain cases: but the plan of the Masters' Court seems abandoned. The salaries of the Masters, under the 5 G. 3. and 48 G. 3, are to cease; the appointments of the Masters are to be vested in the Crown; the salaries of the Masters are to be paid out of the suitors' fund. The Lord Chancellor is to issue a set of orders, for establishing the practice in the different offices, and for consolidating and settling the practice of the Court. Compensation is directed to be made to the officers abolished by the bill. The Chancellor is empowered to give superannuation allowances.

^b See *ante*, 85.

And the bill provides, that an annual statement of the suitors' fund shall be laid before Parliament.

The great omission in the present bill, when compared with the last, is as to the Court of Appeal in Equity; no mention of which is made. The clause giving the House of Lords power to call in the assistance of the Equity Judges, and to authorize the Examiners of the Court of Chancery to administer the usual oaths, have also disappeared.

REVIEW.

Four Letters on the Details and Machinery of the Bill for a General Registry of Deeds relating to Real Property. By Humphry W. Woolrych, of the Inner Temple, Barrister at Law, Author of "The History and Results of Capital Punishments in England," &c. &c. Saunders & Benning. 1833.

It is the present fashion to render every science popular and easy of comprehension, to strip it of its technicalities, and present it in a form and words which may be comprehended by all. The present pamphlet is an attempt to do this service for the Registry Question; and its author undervalues its merits when he calls it by the unattractive title of "Letters." It should have, in truth, been entitled "The Romance of the Registry;" or "Dramatic Illustrations of the Second Real Property Report;" or something which would have assured the reader that he was not to expect any thing so dry or tedious as reasoning, argument, or practical information. We are told in the preface, that it has been "composed for the purpose of opening the public mind to the great merits of the General Registry Bill;" and "the author ventures to hope that the people at large will make themselves masters of the plan; and he can assure them, that if they will give it their support they will experience a great increase of economy in conveyancing." After this elegant commencement the author begins his letters, familiarly addressing them "Dear Sir;" but whether this happy person is the reader, or the chief registrar is *posse*, or who else, does not appear. The letters then flow on in a style pleasantly diversified by little familiar dialogues and facetious stories; and we can assure Mr.

Woolrych that although his serious argument is sometimes ludicrous, his jokes are irresistibly grave; and that although his information on his subject is slender, it is not at all exceeded by his power of using what he has.

The letters may be resolved into two kinds of paragraphs; the first being eulogiums on the General Registry Bill, and the last being attempted answers to the objections to it; and if we are not quite convinced by the latter, we are dazzled and confounded by the former—of which this may be taken as a specimen:

“Negligence will no longer supplant industry, and a professed carelessness, the frequent offspring of secret fraud, will no more rise from amidst its native darkness to violate a possession which time and good faith have established.” p. 21.

Of the truth of which we should be even more convinced if we could understand what the learned author means. But it would be idle, in Mr. Woolrych's opinion, to deny the principle of the Registry Bill; and we shall see how he brings forward the arguments in favour of it. On the point of suppressed deeds he is illustrative to a fault—although the following is not quite clear:

“One Smith has a life interest under a settlement. He may make an appointment of the estate absolutely to whomsoever he will, to you, or to me. He makes an appointment to James Brown. His eldest son, whom he disinherits, or, which is more common, who has a life estate given him, sells or mortgages the property, and dies. Then comes James Brown, and turns out the unlucky purchaser, or mortgagee, by virtue of his absolute title.”

We presume it is meant by this, to suppose an estate limited to such uses as Smith shall appoint, and in default of appointment, to himself for life, remainder to his eldest son for life, remainder over (rather an unusual mode of settling lands, we beg to inform our author). Now if Smith were to appoint in fee “to you or me,” you or I would enter on the property and take the title-deeds, and thus the eldest son would not be able to sell or mortgage it; although if he took only a life estate, “which is more common,” or if he were disinherited, we do not see how he could easily take in the purchaser or mortgagee, who would not only be unlucky, but very ill-advised, to purchase or lend money. Other stories, quite as amusing, and displaying the same knowledge of the subject, are also told respecting John Williams, Edmund Smith, John Smith, and Henry James; and Mr. Woolrych ends with the melancholy reflec-

tion, “How many instances *may there not have been*, in which deeds have been mislaid, forgotten, or omitted to be brought forward by the person who happens to have the custody of them!” Aye, *may there not have been*; but we have it in our power to comfort our author on this head, by telling him that it is distinctly stated in the Report of the Select Committee of the House of Commons on the subject, that such instances are extremely rare^a.

Mr. Woolrych then goes on to relate another funny story, about “Walter Jones, Esq., an enormous proprietor of land,” who fails. “Sir Simon Wallop” purchases a part of his land, and “Farmer Jackson” a smaller part. Sir Simon gives Jackson a covenant to produce the title-deeds, but afterwards parts with them. Jackson wishes to sell his portion, and applies to Sir Simon, who is unable to fulfil his covenant; whereupon, Mr. Woolrych says, the farmer must go into Chancery; whereas we should send him to law on his covenant, which would soon bring Sir Simon to his senses, and his deeds into existence. The fact is, these little stories are “pleasant, but wrong;” and we may hint that what they gain in sprightliness, they lose in law. Of this we can only find room for another instance, which is cited to prove the inefficiency of outstanding terms to protect a purchaser or mortgagee:

“A man may be fraudulent enough to mortgage his property, and afterwards to sell it without mentioning the mortgage. Or, it may happen, that his heir or devisee might sell without any knowledge of the incumbrance. Such an event is possible, because the mortgagee might receive his interest from the attorney of the mortgagor, with whom the new owner of the estate might not have had any dealings. The first thing which the purchaser's attorney does, is to discover whether there is an outstanding term, and, accordingly, he finds out that one really exists under the settlement, as we have above described. This he immediately causes to be assigned to attend the inheritance of his client, and in the instance we have put, all things are safe. The attorney has done well, and the *bond fide* purchaser is secured. But presently comes the mortgagee with his claim, poor man! and finds the bird flown, and the deeds gone. Indignant at the dishonesty of his debtor, he institutes proceedings against the purchaser for the amount of his mortgage. The purchaser, vexed and frightened, hastens to his solicitor, and states the circumstances with no very placable brow. ‘Ah! but gently, my friend,’ says the attorney, ‘do you think that I have

^a See the Report, 2 Monthly Record, 417.

been asleep? We have got the assignment of the outstanding term."—"I know nothing of the outstanding term, I only know that it was a very long bill," exclaims the terrified and confounded client. The end is, that the mortgagee loses every farthing of his money, and although the purchaser is justly left in possession of his bargain, a serious evil has been committed."—p. 16.

Now we are anxious to relieve Mr. Woolrych's obliging anxiety for purchasers and mortgagees. If the mortgagee were tolerably well advised (and the author must admit that, if he were ill-advised, he might be utterly deprived of his rights under the Registry Bill), the evil he supposes could never happen. In the first place, if well-advised, the mortgagee would have investigated the title, and taken an assignment of the outstanding term for his own benefit; in the second place, he would have obtained possession of the deeds; in the third place, therefore, the purchaser would never have completed his purchase; and, in the fourth place, the mortgagee would never have lost his money.

Mr. Woolrych must permit us, therefore, to give him a little advice, which we assure him is well meant. Before he praises a new system, he should understand something of the one which it is intended to displace. To write well and familiarly on a subject, it is necessary that its ordinary principles, at least, should be known; and before a person sets up as a teacher of the public, it would be as well if he had first taught himself.

SELECTIONS FROM CORRESPONDENCE.

No. XXI.

EDUCATION AND EXAMINATION OF ATTORNEYS.

To the Editor of the Legal Observer.

Sir,

BEING your first correspondent on the subject of the education and examination of attorneys, I may be expected to notice the letter of S. He has written, I think, in an assumed character—that of a young man about to apply for admission as an attorney. Such person would not so lightly feel the duties which that situation imposes upon him. He would not proclaim, that a dolt, if "a good sort of man," is a proper person to be admitted a member of the profession; leaving the unfortunate client to the remedy by action.

Though your correspondent S. be not full of expedients, he has suggested one expedient,

by way of pleasantry, I apprehend; for by what means can the *respectability* (meaning of course the moral respectability) of a young man be ascertained previously to his admission as an attorney? Unless the judges or the examiners deal in the occult sciences, or possess a divining rod, like Master Dousterswivel, how can they discover the hidden recesses of the human heart? The blackest propensities may lie dormant there, unknown even to the individual himself: for until motives sufficiently powerful to produce action be presented to the mind (and which the future alone can present), its purity will remain unchanged. No human foresight can, I fear, prevent the *sharpers* entering into the community; but when they are detected, they may soon be rendered innoxious, by the inquisitorial power which the judges very properly possess, and which they might exercise much more frequently than is their custom. Are not low-cunning, chicanery, dishonorable practice, and all the sharpers' hateful arts, more likely to be found lurking in the gloom of ignorance, than abiding in an enlightened and well-educated mind?

I wrote in the hope of increasing the respectability of the profession: the letter of S. has, I fear, been prompted by a desire to repress its influence.

G. W.

Sir,

As the subject of education and examination of attorneys has before been discussed in your valuable columns, I scarce know what apology to offer for urging a few remarks, than as your correspondent in the last number observes, "the importance of the subject to the public at large" demands our attention, or unless further correspondence on the subject would lead to a legislative enactment. It is certainly much to be regretted, that "attorneys, as a body, do not hold that station in the world's esteem to which they are entitled;" and it therefore becomes a matter for consideration, how the profession are to become entitled to that respect, which the importance of their occupation demands. I should say, if the necessity which your correspondent G. W. attaches to education, and E. G. to capacity, were united with the necessity urged by your correspondent S. to respectability, it would be a certain step towards accomplishing this desirable object; but then, without some assistance from the legislature, how should we be enabled to carry these things into effect? I, for one, am certainly of opinion, that the profession suffers discredit, and the world imposition, from the "sharpers" in the profession infinitely more than from the fools of it; and although I admit, to its fullest extent, the necessity of talent and ability, yet no one, I am sure, can deny the grievance that exists, while that class of persons, commonly called "pettyfoggers" and "sharpers," are allowed to exist: and when the name of a lawyer becomes almost a by-word to the world, does it not behove the respectable part of the profession to stand forward in a body to oust these

"worthy gentlemen" from a profession that would otherwise become, not only honorable to themselves, but to the public at large? It seems difficult to devise means of effecting such an object. I should, at any rate, suggest, that in addition to an examination, a prohibition to taking articulated clerks under a certain premium, excepting in the case of children: thus, if the amount were stated low, say at least one hundred pounds, it would limit rather the number of attorneys, prohibit many low persons from entering the profession; while those who were not affluent, but highly respectable, would gain ready admission. I cannot think there is much fear that clients will suffer from want of knowledge, where a respectable practitioner is concerned.

T. H. E.

Sir,

I trust you will not require me to apologise for troubling you with another letter on this subject, in reply to those of E. H. and H. C. T.; for I do not, at present, think the point is so clearly against me as E. H. fancied his tale would make it: and I have before said, my object was to bring the subject under further discussion.

The arguments of E. H. are two-fold; first, that the examination I propose *ought not*, and, secondly, that it *cannot* be carried into execution.

On the second point I have yet advanced nothing, for I thought that the first should be first decided; and though I cannot but think, that by means of the Incorporated Law Institution, or otherwise, some examination into general character for honesty and good principles might be contrived, yet I must call to my aid the rules of law against duplicity, in pleading to dispose (for the present at least) of this second question. I will therefore now address myself to the first.

In my former letter, I stated that the legal profession was sunk so low in the eyes of the world, by those members who were wanting in *respectability*, rather than those who were wanting in *capacity*. The case which is related by E. H. is so shortly stated, that it appears to me quite insufficient to decide, nay, I would almost say to assist in deciding the question. As E. H., however, relies so much on it, let us for a moment consider it.

It does not appear that the "ignorant attorney who prepared the will," there spoken of, was, at all events, unable to pass the *pons asinorum* of his profession. He made a mistake, it appears, in drawing a will, which the parties who claimed under it thought it advisable to spend "hundreds or thousands of pounds" to support. This sum is doubtless partly composed of fees to counsel for advising on cases before defending the actions and suits which E. H. mentions, and afterwards for other opinions on evidence, &c. during their progress. And other attorneys were doubtless employed in defending them. Yet all these attorneys and counsel went boldly on; they never gave up the question by a compromise.

They would all, I suppose, be at once rejected by E. H.; nay, I dare say he would, in "one fell swoop," purge the Courts at Westminster of half their officers. I am inclined to think, however, that all this litigation was rather a fault in the law itself—it was but part of the "glorious uncertainty of the law." It is not, however, by one or two particular cases that this question can be satisfactorily decided.

E. H. bestows a sigh on those, who after serving their apprenticeship, should be refused admittance, on the score of dishonesty or depravity; and yet he would ruthlessly exclude all such as could not, with a prophet's foresight, predict the too uncertain and often contradictory decisions of a Court. I leave it to your readers to determine how much more justly our pity may be claimed by the one than by the other.

In reply to the last objection of E. H., I can only answer, that I never, for one moment, considered that wealth was any standard of respectability.

That there are no ignorant lawyers, or that an examination as to *capacity*, before admission, would not protect us from many more, I do not contend. But I am inclined to think, that the present mode of recovering the damages which a jury awards as a recompence for the injury sustained by an attorney's ignorance, is his most just punishment: He then takes the responsibility of conducting any particular affair, or not, as his own judgment dictates; and he may be well qualified for the ordinary duties of an attorney, though, perhaps, incapable of their more difficult ones. That the law, however, on this head, as it now stands, is perfect, far be it from me to assert.

No one, I think, will deny that the legal profession is, more than any other, swarming with the most dishonest and unprincipled practitioners; and I think, that if any examination could be formed that would cleanse it of these nuisances, it would be the greatest boon to all its honorable members, and to the public at large, that could be well bestowed.

H. C. T., I observe, seems rather inclined to favor both kinds of examination: this may, perhaps, be at last the best plan. S.

NEW BILLS IN PARLIAMENT.

A BILL FOR HOLDING THE SUMMER ASSIZES FOR THE COUNTY OF SUFFOLK, IN EVERY YEAR, AT IPSWICH.

RECITING, that it is expedient that the Summer Assizes for the county of Suffolk be held in each year in the town and borough of Ipswich: And that the holding the same as aforesaid would be conducive to the more speedy and effective and due administration of justice in the said county of Suffolk; it is therefore proposed to be enacted, That from and after the all the summer Commissions

of Assize and Nisi Prius, and all General Commissions of Oyer and Terminer, and all Commissions of General Gaol Delivery, which shall be appointed to be held and executed for the said county of Suffolk in the summer months in each and every year, shall be held and executed in the Court House in the town and borough of Ipswich.

Provided, That if at any time hereafter the said town and borough of Ipswich, or the said Court House, shall be wholly unfit for holding Assizes there, by accident of fire, or by means of any contagious or epidemical distemper, or by reason of any civil tumults or disorder, or the danger or reasonable apprehension thereof, or by reason of any other unforeseen cause or exigency, the same, or any of the aforesaid matters be made to appear before the Lord High Chancellor, or Lord Keeper, or Lords Commissioners for keeping the Great Seal, for the time being, that then and in such cases only it shall and may be lawful to and for the said Lord High Chancellor, or Lord Keeper, or Lords Commissioners for keeping the Great Seal for the time being, with the advice of the Justices of Assize, from time to time, in and during the continuance of such respective exigencies only, and for and at no other time or times, to appoint some convenient place within the said county of Suffolk for holding the said Assizes, and each or either of them, instead of the said Court House in the town and borough of Ipswich; any thing in this present Act notwithstanding.

SUPERIOR COURTS.

Court of Chancery.

PRACTICE.—INJUNCTION.

A special injunction, granted, without the previous Common Injunction, to restrain a plaintiff at law from suing out execution upon a judgment obtained by him in an action of ejectment, is held to be contrary to practice, except in the counties palatine, and in cases of warrants of attorney, where there was no opportunity of obtaining the common information.

A chapel, belonging to the sect of Presbyterians in Wales, has been for some years the subject of several suits at law, and in equity, as well before the passing of the act abolishing the Welch Judicature as since. A special injunction was granted by the Court there to restrain the heir-at-law of the last surviving trustee of the chapel, from suing out execution upon a judgment obtained by him in an action of ejectment against a preacher in possession, or claiming the right of possession. That injunction was afterwards discharged by the Welch Judge in equity. After the abolition of

that jurisdiction, the suit was renewed in this Court; and upon application made, a like injunction was granted, *without the previous common injunction*. Upon a motion to dissolve that injunction for irregularity, the Lord Chancellor having heard the arguments of counsel for parts of several days, now delivered his judgment.—“The question in this case turned upon the regularity of a special injunction—alleged on one side to have been granted on a suppression of facts—to restrain a plaintiff at law from taking out execution upon a judgment in an action of ejectment, there being a preceding injunction granted—and which was dissolved—in the Welch Courts, before the abolition of the Welch Judicature. It is not necessary to go into the consideration of those facts which are stated to be suppressed or misrepresented upon the application for this injunction. I find no authority for the granting of a special injunction in such cases as this, without a previous common injunction. In the case of *Franklyn v. Thomas*, 3 Meriv. 225, Lord Eldon lays down the rule of practice, to refuse such injunctions, without the previous common injunction, except in cases where the plaintiff has not an opportunity of obtaining the common injunction. In a case of *Annesley v. Rookes*, in the year 1817, mentioned in a note to Mr. Merivale’s report of *Franklyn v. Thomas*, there was, it is true, a special injunction granted without the common injunction, to restrain a defendant from suing out execution upon a warrant of attorney, given to confess judgment upon a bond. Warrants of attorney form an exception to the general rule, being cases in which a party could not have the opportunity of obtaining the common injunction. I take it there is no authority to negative that the course of proceeding in Wales was the same as it is here. In the counties palatine, the practice was to grant a special injunction without the previous common injunction. That was another exception to the practice here, and the ground of it may be the same as of the warrants of attorney; but it is clear that this practice of the counties palatine did not extend to cases like this, as the Judge there dissolved the special injunction for this very irregularity. I take it therefore that this injunction must be dissolved, with costs.”

Attorney General v. Jones, at Lincoln’s-Inn Hall, before the Lord Chancellor, Feb. 12th, 1833.

Rolls Court.

AGREEMENT.—LEASE.—VARIANCE.

A proviso in an agreement for a lease of a house is, by mistake, omitted in the lease, upon proof on the part of the lessee that there was no intention on his part to vary the agreement, and in the absence of proof to the contrary on the other side, it was held that the lessee was to have the benefit of the proviso, if inserted in the lease.

The plaintiff’s bill stated, that by a me-

memorandum of agreement, bearing date the 1st of August, 1825, the defendant agreed to let to the plaintiff a dwelling house upon lease for seven, fourteen, or twenty-one years, upon the following terms:—the plaintiff paying 1000*l.* upon entering into possession of the house, was to hold it at a rent of 50*l.* a year for the first seven years, at the expiration of which, the tenant was to have the option of continuing the possession for the next seven years, at the like rent, upon paying down another 1000*l.*, or at the increased rent of 250*l.* without such payment. A like option was given him at the expiration of fourteen years; but there was a proviso, that he may give up the premises at the end of any of those periods, and so put an end to the term. A lease, purporting to be in pursuance of this agreement, was drawn up by the defendant's solicitor, and a draft thereof, together with a copy of the agreement, and abstract of title, was given to the plaintiff's solicitor, and laid by him before counsel. In the draft of the lease, the premises were demised for a term of twenty-one years, determinable in manner thereafter mentioned, being the terms above stated, except the proviso, giving the tenant the option of determining the lease at the end of seven, or of fourteen years, which was omitted, and the omission escaped the notice of counsel to whom it was submitted. The lease was executed in this form; and the plaintiff paying the 1000*l.* entered upon the possession. A short time before the expiration of the seven years, the plaintiff signified his intention of putting an end to the term, and giving up the premises, when the defendant insisted that he had taken from him an absolute lease for twenty-one years, and that the only option reserved to the plaintiff was to pay another sum of 1000*l.* or fall under the increased rent of 250*l.* a year.

Mr. *Pemberton* and Mr. *Sidebotham*, for the plaintiff, insisted that the lease was a departure from the terms upon which the parties agreed, as appeared by comparing it with the agreement. They read the depositions of the counsel or conveyancer, before whom the lease was laid to be settled, and who stated that the omission of the proviso had accidentally escaped his attention.

Mr. *Bickersteth* and Mr. *Barber*, for the defendant, submitted that there was no omission or mistake in the lease; it did give the plaintiff the option of paying down 1000*l.* at the expiration of the first seven years, or falling under the larger rent—that was the only option intended to be given him. They read the deposition of the defendant's solicitor, who stated that it had been his belief, that the words "determinable at the end of seven or fourteen years as hereinafter mentioned," referred to the option of paying the 1000*l.* in advance, or the higher rent.

The Master of the Rolls.—The questions in this case are, whether a clause has been, by mistake, omitted in a lease, against the intention of the parties; and if so, whether the lessee is consequently entitled to have the option of determining his lease in the same manner as if

the clause had been inserted. That the omission of this clause is contrary to the original intention of the parties, is manifest upon the agreement, signed by the defendant himself. No evidence has been produced by the defendant to shew that that original intention was departed from, or varied; and it is proved, by the testimony of professional gentlemen of high character, that there was no intention to vary the agreement on the part of the plaintiff. The lease itself is unintelligible and absurd in its expressions, unless the clause were omitted by a mere mistake of the drawer. The plaintiff is therefore entitled to the relief prayed by the bill; and, as the defence is wholly without colour or fairness, that relief must be given to the plaintiff, with costs.—*Wood, Bart. v. Murr*, at the Rolls, Feb. 13th, 1832. M. R.

King's Bench Practice Court.

AWARD.—CONSTRUCTION.—ARBITRATION.

Construction of award as to costs not specifically directed.

Godson shewed cause against a rule for setting aside an award, on the ground that it did not give any direction as to the costs of the reference, although they were placed in the discretion of the arbitrators; the costs of the cause were to abide the event of the award. Their award on the subject of costs was, that "each party shall pay and bear his own costs of suit." The words "costs of suit" might mean (technically) the costs of the cause; but they might also mean the costs of the reference; and the Court would presume, that the arbitrators had exercised a discretion over those costs only, over which they had power to act. But if it means the costs of both the cause and the reference, then the arbitrators have decided as to the costs of reference, and therefore the award is final: if it means only the costs of the cause, then no direction is given as to the costs of the reference; and the rule in such cases applies, that where nothing is said in an award about the costs of reference, each party pays his own costs. In that case also the award is final.

F. Kelly supported the rule.

Parke, J., I think the award of the arbitrators in this case is final. Their award either included the cost of the cause and the costs of the reference, or it only includes the costs of the suit. If it includes the costs of both the cause and the reference, it is bad as to the costs of the cause, but it is still final. If it only includes the costs of the cause, it says nothing about the costs of the reference; and therefore each party must pay his own costs. In that case also the award is final. The present rule must therefore be discharged.—Rule discharged, without costs.—*Jones v. Jones*, Jan. 28th, 1833.—K. B. P. C.

WARRANTS OF ATTORNEY.—SURVIVOR.—
JOINT DEBT.

Judgment may be entered up on a warrant of attorney to three, for a joint debt by the survivors, although nothing is stated in the warrant or the defeazance as to survivors.

A warrant of attorney was given to three persons for a joint debt due to them. In the warrant or defeazance nothing was said relative to survivors. One of the three died, and on application being made to enter up judgment upon the warrant, at the suit of the survivors—

The Court allowed it to be entered up, observing, that as the debt would survive, the power to enter up judgment would also survive.—Rule granted.—*Build and another v. Wightman*. 31st Jan. 1833. K. B. P. C.

POOR RATE.—COSTS OF APPEAL.—JURISDICTION OF JUSTICES.

The Justices at Sessions have power to hear and determine an appeal which has been entered against a poor-rate, although the appellant does not appear to support his appeal.

An appeal against a poor rate was entered at the Epiphany Sessions, 1833. After it had been entered, the appellant was advised that the evidence, by which he proposed to support his appeal, was insufficient. When, therefore, the appeal was called on in its order, the appellant did not appear to support it. The respondents prayed that the Court would enter into the appeal, in order that the respondents might obtain their costs, to which they had been put in consequence of the appeal. The Court of Quarter Sessions, conceiving that they had no power to proceed, in the absence of the appellant, refused to go into it. A rule for a mandamus to compel them to hear it, having been obtained, and cause shown against it—

Parke, J., said, it was clear that the sessions had power to hear the appeal; but as the object of this appeal was only to obtain the costs of the respondents, it would be better that the rule for the mandamus should be discharged, on the appellant undertaking to pay the respondents' costs.—Rule discharged accordingly. *The King v. Justices of Essex*, Jan. 30th, 1833. K. B. P. C.

SMALL DEBTOR.—ATTORNEY.—NOTICE.

A debtor who seeks his discharge under the 48 Geo. 3, c. 123, must serve his notice on the plaintiff in the action, and not on the attorney. Such an application can only be disposed of in term time.

A debtor who had remained in execution for twelve calendar months, for a debt not exceed-

ing 20l., applied, under the act of the 48 Geo. 3, c. 123, for his discharge. He served the notice required by the act on the plaintiff's attorney only, and not on the plaintiff himself.

Ball opposed his discharge, on the ground that the notice should have been served on the plaintiff, and not on his attorney; for the attorney's authority had ceased when execution had issued.

Parke, J.—The notice ought to be served on the plaintiff himself, and not on his attorney.

R. V. Richards then applied for further time, in order that the defendant might serve the plaintiff, and that the matter might be disposed of at chambers.

Parke, J.—From the language of the statute, it is clear that the application can only be made and disposed of in term time, and cannot be disposed of at chambers. The defendant must therefore remain in custody until the next term. Rule refused.—*Kelly v. Dickenson and another*. Jan. 31, 1833. K. B. P. C.

Eschequer.

COURT OF REQUESTS ACT.—COSTS.

The master of a vessel trading between London and Rotterdam, having no place of business in the city, but occasionally transacting a little business at the quay, where his vessel is moored, and having a place of residence in Southwark, is not a person seeking his livelihood, or having dealings or transactions in London, within the meaning of the London Court of Requests acts, 3 Jac. 1, c. 15. & 14 G. 2, c. 10.

Comyn shewed cause against a rule calling on the plaintiff to shew cause why he should not be deprived of his costs of this action. This application was made under the authority of the London Court of Requests acts. The first act which takes away costs, where a defendant who ought to be sued in the Court of Requests is sued in the superior Court, describes the person liable to be sued in the inferior Court thus: "any citizen and freeman of the city of London, or any other person being a victualler, tradesman, or labouring man, inhabiting within the said city or the liberties thereof." The words of the 14 G. 2, c. 10, extended the class of persons liable: the words are, "every citizen and freeman of the city of London, and every other person and persons inhabiting within the said city or its liberties, and also persons renting or keeping any shop, shed, stall, or stand, or seeking a livelihood there." And the last act, the 39 & 40 G. 3, c. 104, describes the person liable to be sued, as "residing or inhabiting within the said city or its liberties, or keeping any house, warehouse, shop, shed, stall, or stand, or seeking a livelihood, or trading, or dealing, within the same city or liberties." In the first place, this case falls within the exception mentioned in the act, for there is a count in the declaration for use and

occupation. But in the 3 Jac. 1, c. 15, there is an exception or proviso, which enacts that the act shall not extend to "any debt for rent upon any lease of lands or tenements, or any other real contracts." In the declaration there is a count for use and occupation; and therefore, this case falls within the exception, according to *Woolley v. Cloutman*, Dougl. 244; and *Holden v. Newman*, 13 East, 161; in which it was held, that that clause extended to an action for use and occupation. He also cited Tidd, 958, 9th edit. [*Bompas*, Serj. cited the exception, as stated in 39 & 40 G. 3, c. 104, "that this act shall not extend to any debt, where any title of freehold, or lease for years, of any lands or tenements, shall come in question." And the Court expressing an opinion, that this did not include use and occupation, *Comyn* proceeded with the facts.] Upon the other point, with respect to the defendant's residence and business, the affidavits are contradictory. The defendant says, that at the time of the service, he was at Brewer's Quay, Lower Thames Street, seeking his livelihood there, within the city; that he has before been summoned to the London Court of Requests; that the plaintiff knew he was trading and dealing at Brewer's Quay aforesaid; and that he recovered only 4*l.* 8*s.*; that he, the defendant, has been continually a trader at Brewer's Quay, and has bought furniture, meat, fruit, &c. there for eight years, and within that time has taken a ship to Rotterdam, and provided the men with provisions at a certain sum per day. My affidavits deny that the plaintiff knew of the defendant's dealings at Brewer's Quay, or that the defendant had any such dealings. On the contrary, it is sworn that the defendant has for some years past resided in Southwark; that he has no counting-house at Brewer's Quay, and that the counting-house and buildings at Brewer's Quay are in the possession and occupation of Joseph Barber as lessee; that the defendant has for the last five years been employed by Messrs. Cupper, as the master of a vessel going to and from Rotterdam; that he comes to the quay to unload; that the defendant is never more than twenty-eight days in a year alongside the quay: that after the vessel is discharged, it is moored into a dock, in the county of Middlesex, until the defendant is ready to go to sea again. The defendant's affidavit states that he sells and buys; but the evidence is the other way: our affidavits shew that he was dismissed by Messrs. Cuppers out of their service last October, and the execution had issued before. [*Bayley*, B. Does he get his whole livelihood in London?] It is not stated where he gets his whole livelihood: but if he gains his livelihood in London, and lived in another place, he is not within the act. *Stevens v. Derry*, 16 East, 147; *Holden v. Newman*, 13 East, 161. He also cited 5 Esp. 19; 8 East, 336; and *Skinner v. Davis*, 2 Taunt. 196.

Bompas, Serj. in support of the rule.—All the livelihood the defendant gets is at London; he buys and sells there; the transaction arose there; it is his sole place of business; he has

a *locus standi* there. [*Bolland*, B. Is there any case in which the party did not lodge?] *Croft v. Pitman*, 5 Taunt. 648. [*Bayley*, B. In that case the defendant had a place for carrying on his business.] That is not mentioned in the act. The words are, "seeking a livelihood, or trading, or dealing within the city." [*Comyn*. In *Stevens v. Derry* it was held, that meant his whole livelihood.] There is a case in 5 Bing. 315, *Bushnell v. Levi*, of a sheriff's officer in Fetter Lane, who carried on business in Middlesex. [*Lyndhurst*, C. B. There he had a place to carry on his business in London. *Bayley*, B. Is every master of a coasting vessel constantly coming to the same wharf, to be within the act?] How can the Court get over the words "trading or dealing." The cases of *Fleming v. Davies*, in 5 Dowl. & R. 372, and *Cross v. Pitman*, are in point. [*Comyn* cited *Reeves v. Stroud*, 1 Dowl. P. R. 399, as at variance with *Fleming v. Davis*. [*Lyndhurst*, C. B. *Taunton*, J. there says, "he has only a counting-house within the city."]

Per Curiam. The defendant has no residence within the city: and though he speaks of a trading, and buying and selling, it is consistent with his affidavits, that he buys and sells on account of his master. This is the case of a person going between London and Rotterdam, bringing here things to sell: he stays here a short time: he is on the Thames in his vessel, which is moored alongside the quay. The statute ought to have a reasonable construction: that contended for by the defendant, would enable parties to commit gross frauds.

Rule discharged.—*Double v. Gibbs*, Nov. 26, 1832. Excheq.

LIEN.—SET-OFF.—ATTORNEY'S COSTS.

If an attorney practise in a Court in which he has not been admitted, he cannot maintain an action for his fees, nor even for money out of pocket: neither has he any lien for his costs, or for money disbursed; and therefore, he cannot prevent the damages and costs in one action, being set-off against those in another, though his costs have not been paid.

Coltman on a former day had obtained a rule on the part of the plaintiff in one of the above actions, and the defendant in the other, calling on the opposite party to shew cause why the damages and costs in one action should not set off against the damages and costs in the other, without allowing the attorney's costs, he not being an attorney of this Court.

Wightman now shewed cause.—The only question in this case is respecting the attorney's lien; and it is objected, that not being an attorney of this Court, he can have no lien: but this is not like the case of an attorney suing his client, as in *Vincent v. Holt*, 4 Taunt. 452; and that case is inconsistent with the previous case, in H. B. 50, *Meadowcroft v. Hol-*

men. The rule does not apply to cases of set-off. It is admitted, that in general, costs may be set off; but the lien which exists between him and his client must first be satisfied. [*Bayley, B.* The question is, whether the attorney has any lien.] Yes, he would have a lien for money out of pocket. It is only for profit that he cannot recover. [*Lyndhurst, C. B.* What authority is there to that effect?] There is no authority either for me or against me. [*Bayley, B.* He might have proceeded in the name of an attorney of this Court. If a regular attorney does not deliver a bill, he cannot recover even money out of his pocket. *Lyndhurst, C. B.* He has no right to conduct the cause. The money laid out, is laid out in the cause. How can you maintain your proposition? The money is laid out in doing that which the law does not allow. Suppose we were of opinion that he could recover nothing.] The plaintiff can recover his costs, and they would form an item of set-off. They say that the bills when taxed would be set aside, and the attorney could not appear; but this Court will not interfere summarily to prevent an attorney having his lien.

Coltman, contrà. A special privilege is given in respect of his character of attorney. He clearly could not sue his client. *Vincent v. Holt*, 4 Taunt. 452. [*Bayley, B.* On a late occasion the Court doubted whether that was rightly decided.*] The attorney was acting in direct contravention of the 2 G. 2, c. 23, sect. 1 of which expressly enacts, that no person shall act as an attorney, unless he is sworn, admitted, and enrolled in the Court in which he practises as an attorney. He was then stopped.

L. Lyndhurst, C. B. An attorney cannot act in this Court, unless he is entered in this Court; and as he cannot sue, he cannot have a lien; and therefore, the set-off must be as prayed.

Bayl. B. There is an exception of his using the name of another attorney. Rule absolute. *Latham v. Hill, Hill v. Latham*, Nov. 23d 1832. Excheq.^b

EQUITY EXCHEQUER SITTINGS.

The judgments which were fixed for Tuesday, the 19th of February, are postponed until Monday the 25th, when they are to be given at Westminster, at a quarter before 10 o'clock.

EXCHEQUER OF PLEAS SITTINGS.

Special Jury Appointments.

MIDDLESEX.

Saturday,	February 23
Monday,	25
Tuesday,	26

* See *Attorney General v. Malin*, 2 Tyr. 512; 2 C. & J. 500; and L. O. Suppl. for Feb.

^b See *Miller v. Towers*, Peake, 102; *Thwaites v. Mackinson*, 1 M. & M. 199; *Heming v. Baxter*, ib. 529; and see 2 M. & M. 33.

SITTINGS AT THE ROLLS.

The General Petition Day at the Rolls has been appointed for Friday, 1st March, at 10 o'clock.

NOTES OF THE WEEK.

House of Lords.

LUNATICS BILL.

After a short discussion, this Bill has been read a third time in the Upper House, and passed.

House of Commons.

LEGACY AND STAMP DUTIES.

Lord Althorp, in the course of the discussion for bringing up the Report of the Committee of Supply, admitted that the taxes raised from the Legacy and Stamp Duties did not increase in proportion to the increase in the value of property; but said, that the tax paid with respect to large masses of property was greater than upon small masses. It was, however, not a per centage tax. With respect to the duty on freehold property, the expense of conveying it was infinitely greater than it was in the case of personal property. There was one reason for not imposing a legacy duty upon landed property; namely, that if such a duty were imposed, the whole value of the landed property of the country would, in a certain number of years, pass through the hands of the State. Ever since he had been in office he had wished to bring forward a plan for the consolidation of the Stamp Duties. The subject was at present under consideration, and some Bills were actually prepared. There were two hundred and forty statutes relating to the Stamp Duties, and those, by consolidation, would be reduced to eleven. He stated, that either he, or some other member of Government, would probably be able to bring the question under the consideration of the House during the present session.

ATTORNEYS' CERTIFICATES.

A petition from the attorneys and solicitors of Ireland, for the discontinuance of the stamp duties on their certificates, has been again presented. We noticed the former petition, Vol. 4. p. 260, and shall

continue to call the attention of the Profession to the subject, until this capitation tax be repealed. We have received a letter, urging the repeal, which will be found in the Supplement published this day.

CRIMINAL LAWS.

Notice of a Bill has been given by Sir Eardley Wilmot, to alter and amend so much of the 7 & 8 G. 4. c. 28, as relates to the proceedings in indictments against offenders who had been previously convicted of felony.

Also to alter and amend so much of the 7 & 8 G. 4. c. 29, as relates to the proceedings by indictment against persons under the age of seventeen, charged with simple larceny.

PATENTS FOR INVENTIONS.

A Bill to Amend the Law respecting Letters Patent for Inventions, has been ordered to be brought in by Mr. Godson, Mr. Lennard, and Mr. Phillpotts. The objects of the Bill are to diminish the expence and inconvenience of obtaining patents, and to facilitate their transfer.

GAME LAWS.

A Return has been ordered, on the motion of Mr. Heathcote, of the number of commitments under the Game Laws in England and Wales, from Nov. 1, 1832, to Feb. 1, 1833.

HIGHWAY LAWS.

Notice has been given by Mr. Portman, for the 26th instant, of a Bill to Consolidate and Amend the Highway Laws.

LAW OF ELECTIONS.

Mr. Charles Buller has given notice to move for a Select Committee, to consider such disputed points of law as may have arisen out of the late Elections; and that all Election Committees be instructed to report to such Committee, all points of law which may come in question before them.

The Report of this Committee will be an important legal document.

Notice has also been given by Mr. Buller, of a Bill to Regulate the Mode of taking Evidence in cases of Controverted Elections.

ANSWERS TO QUERIES.

Rate of Property and Consanguinity.

HUSBAND AND WIFE. P. 228.

In *Martin v. Mitchell*, 2 J. & W. 425, Sir Thomas Plumer said, "that an agreement signed by a married woman is invalid." The point arose, but was not disposed of, in *Humphreys v. Holles*, 1 Jac. 76. C. S.

WILL.—TRUST ESTATES. P. 228.

Yes; provided the residuary devise is not charged with debts, legacies, &c. *Silvester v. Jarman*, 10 Pri. 78. *In re Horsefull*, 1 M. & Yo. 292. C. S.

COPYHOLD. P. 244.

The title would have been complete without the surrender, which was *ex abundante cautela*. *C. D.* need not be admitted again. *Walk. on Copy*. 292 and 296. C. S.

LEGAL ESTATE. P. 276.

1. E. W.'s assumption that the legal estate of the fee was vested in *A.*, is erroneous; as must be evident on considering the operation of the Statute of Uses. *A.* was merely the releasee, out of whose seisin the uses (as distinguished from the seisin) were to be executed; and his seisin was only for an instant, being (subject to the use of the term, which was executed in him) immediately transferred to the use in *B.* Consequently, by *A.*'s conveying the term to the purchaser, who had acquired the legal fee by the release from *B.*, merger ensued.

J. L. C.

2. The legal estate in fee was not vested in *A.*, but in *B.*, subject to the term of 500 years, vested in *A.*; the conveyance, therefore, was rightly framed, and the term merged.

J. B.

CHOSE IN ACTION.—ASSIGNMENT. P. 308.

1. The assignment of the wife's choses in action, for a valuable consideration, being a disposition of the property, is sufficient to bar the right of the wife surviving: *vide Earl of Salisbury v. Newton*, 1 Eden. 370. It does not, however, take away her equity. See cases cited in *Elliott v. Cordell*, 5 Mod. 149.

R. F. L.

2. The assignment for a valuable consideration of the wife's chose in action, will not be a sufficient reduction into possession by him, so as to defeat her right of survivorship. *Vide Purdew v. Jackson*, 1 Russ. Rep. 1. In which case it was held, by the then M. R., Sir T. Plumer, that such an assignment would pass only the interest which the husband has, subject to the wife's legal right by survivorship.

JUVENIS.

3. The assignment is not such a reduction into possession as to be valid against the wife surviving her husband, unless he is afterwards enabled to reduce the chose in action into possession. *Vide* the luminous judgment of *Lyndhurst, L. C.* in *Honner v. Morton*, 3 Russ. 65.

E. M.

4. See also *Woollands v. Crowcher*, 12 Ves. 174.

I. R. S.

5. "Mancuniensis" does not state whether his question applies to *legal* or to *equitable* choses in action. If to the former, it is settled in *Nash v. Nash*, 2 Madd. 133, that the husband's actually deriving a pecuniary advantage from the wife's chose in action, short of the actual reduction of the whole into possession (as by receipt of part, and of interest on the residue), will not bar the wife's claim. The claim of the wife surviving to her legal choses in action is founded on the common law. The husband having but the right to reduce them into possession, he can only by his assignment pass such right to the assignee: the subject-matter of the property is not altered. Unless, therefore, the chose is wholly reduced into possession by the assignee in the husband's life-time, the wife surviving will not be barred. See *Mitford v. Mitford*, 9 Ves. 89. *Burnet v. Kinaston*, Pre. Ch. 118: *Morley v. Wright*, 11 Ves. 17.

If the question relates to *equitable* choses in action, an assignment for valuable consideration will bar the right of the wife surviving (*Earl of Salisbury v. Newton*, 1 Eden, 370); but it does not take away her equity, (*Elliott v. Cordell*, 5 Mod. 149, and cases cited,) as the Court would decree her a settlement,—usually, I believe, one half the amount.

J. L.

Common Law.

EXECUTION.—PARTNERSHIP. P. 308.

An execution under which all the interest of one partner is seized and sold, is a determination of the partnership, as to him; because

whatever interest he possessed is divested out of him, and becomes, by the sale, vested in the vendee of the sheriff, who is tenant in common with the solvent partners. *Sayer v. Bennett*, Mont. on Partnership, notes, p. 17. In *Fox v. Hanbury*, Cowp. 445, Lord Mansfield assumed that a partnership might be dissolved by an execution.

M. P.

ACCOMMODATION BILL. P. 66.

In this case it is clear the acceptor, by the default or bad faith of the drawer, has been compelled to pay a sum of money, of which the latter has had the full benefit. *Harrison v. Courtauld*, 3 B. & Ad. 36. Whatever terms may have been agreed upon, as between the drawer and holder, it would be singular to contend, that on this ground alone, the former should be able to subject the acceptor to an action on his account, without making himself liable to repayment. I am of opinion, that the acceptor is entitled to recover against the drawer for money paid to his use.

MANCUNIENSIS.

STATUTE OF LIMITATIONS. P. 307.

1. If there be a mutual account of any sort between A. and B. for any item of which credit has been given within six years, that is evidence of an acknowledgment of there being such an open account between the parties, and of a promise to pay the balance, so as to take the case out of the statute; and therefore as A. paid one pound in 1828, it was an acknowledgment from that period, and takes the case out of the statute. *Cutling v. Skoulding*, 6 T. R. 189.

H. A.

2. In answer to your correspondent, R. M., I beg to refer him to the Act of 9 Geo. 4, c. 14, commonly called Lord Tenterden's Act; in which it will be seen, that where a payment has been made on account of the original debt within the six years, the statute of limitations will not apply, and that the balance may be recovered.

H. W.

Practice.

NEW RULES.—COSTS. P. 307.

With reference to the statement of J. C., I should beg leave to suggest, that the amount of the debt and costs indorsed on the writ should have been tendered to the plaintiff's attorney, within the four days, as specified on the back of the writ; which would, I conceive, be a sufficient tender to prevent the plaintiff recovering in the action. As J. C. thought proper to take out a summons to stay the proceedings, upon payment of the costs, against all parties, the question of costs rested with the master; and under an order upon such a summons the master would be clearly justified in allowing the costs in the actions against all the parties to the bills.

H. W.

State of Landlord and Tenant.

ARREARS OF TAXES. P. 307.

1. I apprehend the landlord is not liable; but I think the new tenant's goods are liable, under the same principle that a third party's effects upon the premises may be distrained for taxes. *Tuson v. Dixon*, 1 Maule & Selwyn, 600.

M. P.

2. The goods of a subsequent tenant will, I think, be liable to be distrained for *assessed taxes* (as the law says, that the goods of a *third person*, if *only hired*, may be distrained for assessed taxes), although the *person in arrear* may have goods on the premises sufficient to answer the charge. 1 Maul. & Sel. Rep. 601.

H. A.

State of Attorneys.

ATTORNEY AND CLIENT. P. 308.

If a title be defective, an attorney is liable only for *crassa negligentia*. *Pitt v. Yalden*, 4 Burr. 2060. *Buikie v. Chandless*, 3 Camp. 17. The point, then, to be considered here will be, whether, under the circumstances, if the case were brought before a jury, there is evidence sufficient to bring it within this general rule. The case of *Ireson v. Pearman*, 3 B. & C. 799, is an express authority to shew, that if his solicitor neglect to search for incumbrances, the purchaser may recover against him at law for any loss occasioned on that account. See further, on the subject of this query, *Brooks v. Day*, 2 Dick. 572; *Wilson v. Tucker*, 3 Stark. 154; and *Newall v. Smith*, 1 Jac. & Walk. 263.

MANCUNIENSIS.

QUERIES.

State of Property and Conveyancing.

DEVISE OF "HEREDITAMENTS."

A. made his will as follows:—"I give all my hereditaments to my friend B."—Will a fee pass to the devisee under the word "*hereditament*?"

A LEGATEE.

CORPORATION LEASE.

C. grants a lease to D. for twenty-one years, of premises held under a corporation for ninety-nine years, determinable with three lives; D. covenants to pay the fines on renewals.—C. becomes *non compos*, and subsequently two lives drop. Can the corporation, under the circumstances, take advantage of the delay in renewing the lease?

A COUNTRY SUBSCRIBER.

JOINT-TENANTS.

A. and B. were joint-tenants of a term for years; A. committed suicide.—Does the term survive to B., or is the interest of both forfeited to the king by the felony? V. C.

LIABILITY OF EXECUTORS.

Is A., an executor, liable to the costs of a bill filed on account of his not furnishing to the administrator of a legatee, an account of the sum due to the legatee, under the will of which A. is the executor. ANON.

FEME COVERT.—APPOINTMENT.

A., by marriage articles, had power to make her will, notwithstanding her intended coverture with B. She made it accordingly, and gave her estates to B., whom on the same day she married. Is the will annulled by the marriage?

LECTOR.

MORTGAGE.—HUSBAND AND WIFE.

If the husband *alone* mortgage his wife's lands, and reserve the equity of redemption to *himself*, will this bar the wife's right as survivor to have the estate exonerated out of his real and personal assets? And if not, will she be bound by a mere *verbal* declaration of her intention to waive such right?

MANCUNIENSIS.

DEVISE.—ANNUITY.—CONSTRUCTION.

If land be devised "to H., subject to an annuity of 50*l.* to his sister E., *during her life*," what estate does H. take? And what difference would it make, if the annuity was payable by H., *during his own life*? MANCUNIENSIS.

COPYHOLD.—LEGAL ESTATE.

A. being admitted to one moiety of a copyhold estate, and entitled to the other moiety in remainder in fee, upon the death of B., who is at the same time admitted thereto; surrenders in 1827, "*all that one moiety, and also all other such parts or shares, if any, of which she may be possessed, of and in, &c.*" and his heirs. In 1831, B., the tenant for the other moiety, dies, and then A. dies. After the deaths of B. and A., C. is admitted, upon A.'s surrender to "*the said moiety, and all other the parts and shares (if any) of the said A.*" No notice has been taken of the death of B. at the Manor Courts. Does the legal estate in the

entirely pass to C. by his admission? And if not, in whom is any, and what part of the legal estate, now vested, and how can C. obtain admission thereto?
R. M.

Practice.

EVIDENCE.—RECORD.

I shall feel obliged if any of your correspondents can inform me of the cases in which evidence has been admitted to explain, vary, or contradict a record.
A. B.

MISCELLANEA.

LEGAL ABSURDITIES.

THE "perfection of human reason," as it is called, establishes, among a thousand other things in proof of its title to the name, that if a man has a leg broken by a carriage, the law allows a deodand to his wife and children; but if he be killed, they have no compensation. If a man grows cabbages or potatoes, the horses employed in cultivating his fields are taxed; but if he grows wheat or barley, his horses are not liable to the highest taxation; because, says the law, cultivating a field for the growth of cabbages or potatoes is not agriculture. If a journeyman butcher happen to be employed on any occasion in serving in his master's shop, the master is liable to pay the tax for a shopman; but if a journeyman baker be so employed, his master is not so liable; because, says the law, the baker is a manufacturer, and the butcher is not.

THE EDITOR'S LETTER BOX.

G. B. is correct in supposing that the *Quarterly Digest*, although the work of the same proprietors, is published distinctly from the *Legal Observer*. It was called for by a large

class of Subscribers, and we recommend it to all who are interested in the success of the whole work, the weekly department of which will be supplied separately, if required. The early numbers being reprinted, the publisher is enabled to complete the sets of Subscribers from the commencement of the work.

We will endeavour to find room for the proposal of E. W. Has he contemplated the difficulty of conducting the establishment? Who are to be the committee? And who the officers? And can an adequate fund be raised?

We thank J. R. S. He will observe that the case has been quoted by another correspondent.

It is observed by one of our correspondents, that a great many Querists might satisfy themselves by looking carefully into the different books; and, as an old practitioner used to say, "They will find a great deal of useful matter, with which they were previously unacquainted, by so searching."

C. D. should state whether his absence during his clerkship was with the consent of the attorney. Reasonable absence, with consent, would be within the fair construction of the rules of service.

We are obliged to R. F. L. for the trouble he has taken in sending his opinion on some Queries. He will observe, that other correspondents have fortified themselves with authorities.

The letter of H. T. C. shall be considered.

A correspondent, who does not acquiesce in the propriety of the alterations we have made in his letter, will please to say, whether he wishes his future communications to be omitted, unless adopted as he sends them. It would be an easy task to print all that we receive; but then we should have no room for some articles that our readers expect to be regularly supplied.

If "Justitia's" advice were followed, we apprehend the law would be ten times more uncertain than it is at present. He should take the trouble to consider both sides of the question, and compare the quantity of benefit and evil in the present system with that which might arise from an alteration.

The Legal Observer.

VOL. V. SUPPLEMENT FOR FEBRUARY, No. CXXVII.
1833.

“ Quod magis ad nos
Pertinet, et nescire malum est, agitamns.”

HORAT.

INSTRUCTOR CLERICALIS.

No. II.

OUTLINE OF THE PROCEEDINGS IN AN ACTION AT LAW.

In the second volume of the Monthly Record (p. 154), we gave an outline of the ordinary proceedings in a suit in Chancery, to the time of hearing and decree: we now are enabled, from the same pen, to continue the series, by a statement of the proceedings in an action in the Common Law Courts.

1. Take full instructions in writing from your client, and particularly the heads of the proofs he can obtain to support his case; and then consider whether an action can be maintained, and what action is proper to be commenced.

What is the meaning of an action? and what are the different kinds of action?

2. Draw *præcipe* for, and fill up a writ of summons, and make and serve a copy.

Why is a *præcipe* necessary? and what is the meaning of a writ of summons? when can it be issued, and how and where is it issued? when is it tested, and what is the meaning of teste? and when is it returnable?

3. If the defendant cannot be personally served with the writ of summons, issue a *distringas*.

What is a *distringas*, and how is it to be obtained?

4. File a declaration conditionally until an appearance be entered.

What is a declaration, and where is it
NO. CXXVII.

filed, and what are the different kinds? How should a declaration be entitled? What should it contain? What is the meaning of filing it conditionally until an appearance be entered? and when can it be filed? What is the difference between filing it conditionally and in chief?

5. Draw copy, and serve notice of declaration.

How is this to be served, and what number of days' notice is necessary? and what is the difference of notice in town and country causes, and in town causes when the defendant's residence from London is a certain, and what distance?

6. Give a rule to plead.

What is the meaning of a rule to plead? When, where, and how is it to be given? and when will it expire?

7. Search for an appearance.

What is the meaning of an appearance?

By whom is it filed? and what is meant by an appearance according to the statute? When, where, and how should this search be made?

8. Draw, copy, and serve demand of plea.

What does this mean? When and upon whom must it be served? When does it expire?

9. Search for plea.

Where are pleas filed and entered, and to be searched for? and if more pleas than one, what pleas are filed at each place? When should this search be made?

10. If the plea be issuable, reply thereto. What is meant by issuable, and by reply?

and how do you reply, and when should you reply?

11. Join issue, and draw, engross, and enter issue.

What is meant by joining issue, and what should it contain? and when is the issue entered? and what is called the issue?

12. Notice of trial to be drawn, copied, and served.

Why is this necessary? and how many days' notice in town causes, in country causes, in causes in London where the defendant lives in the country, and in causes in London, to be tried at the adjournment day? And what is meant by short notice? and how many days is short notice?

13. Draw copy, and engross the record. What is the meaning of a record? What does it contain? And how, and on what engrossed? and of what use is it?

14. Issue a *venire*, and get it returned. What is the meaning of *venire*, and when and how is it issued? When ought it to be tested and made returnable? And how is it to be returned? and by whom, and for what purpose, is it returned.

15. Issue a *distringas*, and get it returned.

The same questions.

16. Pass the record.

How is this done, and by whom, and where? and why is it necessary?

17. Set down the cause for trial.

When must it be set down, and where, and with whom?

18. If necessary, mark the cause as a special jury cause, and apply for a special jury.

What is the meaning of a special jury? When is it necessary? In what manner, and when must it be obtained and marked? and who pays the jury? and what is the meaning of the Judge certifying that a special jury is necessary? What are the advantages of a special jury? and is it tried with common jury causes? What is the difference between special and common jury causes?

19. Draw a *præcipe* for, and issue a *subpoena*.

What is the meaning of a *subpoena*? Where, and how does it issue? and what is the consequence of not obeying it?

20. Copy, and serve the *subpoena* on the witnesses.

When, and how is it to be served?

21. See all the witnesses personally, first making yourself master of what is necessary to be proved; learn most exactly what they can prove for or against you; take down their very words in their presence, if they will allow you; make suggestions to them, to refresh their memory; examine them, as to the facts they know, step by step; question them, so as to set them thinking and reflecting; and reason with them on the subject of their knowledge of what you suppose must have happened. Be extremely courteous to them, and convince them you are only seeking justice for your client, and that it is a trouble they may one day have occasion to ask for themselves. Serve the *subpoena* first; for witnesses generally say they know nothing, till you lead their minds by questioning and reasoning with them on the points upon which you wish to fix their memory. Follow every suggestion and chain of facts and circumstances, and see other persons, if necessary; for causes are generally won or lost by niceties in proofs, or omissions of little and trifling things; and the shades or trifling parts of a witness's testimony throw out the more prominent facts to which he may speak. Be extremely particular as to dates; and as these are generally forgotten, then bring some public event or business—or a family affair, if possible—to their mind, which happened about the same time, so as to fix the dates.

22. Draw the brief, containing—

1st. The pleadings, in an abbreviated form: but be cautious not to omit any averment or statement, in special counts.

2d. A statement of the question (neatly and perspicuously) to be tried; the short grounds upon which the action is to be supported; the presumed defence, and short grounds of it; and a reply to the defence.

3d. A narrative of the facts of the case, in their natural order, and in the simplest style. If necessary to introduce a letter or other document, state its substance: but, unless from particular circumstances it is unavoidable, or you are doubtful of conveying its true sense in an abstracted form, it need not be copied: but have it in readiness, and so that you may produce it the moment it is wanted. Be particular and accurate in remarking at the end of each paragraph on any special circumstance, or drawing any inference, which the facts stated may warrant.

4th. The short outline of the evidence, and the strength or the weakness of it, and

the advantage or difficulties of the proof, and how the difficulties are to be met.

5th. The presumed defence, the way in which it is anticipated to be made out, and the answer to the defence; and if any witness is expected to establish a fact, remark on his evidence, his credibility, and what it is supposed he will admit on his cross-examination, and how and by whom he will be contradicted.

6th. The general observations on the whole case, and the law or fact.

7th. The proofs of the witnesses most fully stated in the words of the witnesses, but arranged in such order as that each witness and his proof will prepare the way for one to follow, and so that the whole of the proofs will come out on the trial to the best effect. At the end of each proof, make any observation (in a short way) that you wish to impress on counsel, as whether the witness is willing or averse, clear or stupid, or whether there may be any objection to him in point of interest or otherwise, so that counsel may know how to treat him, or not to call him unless absolutely necessary.

8th. Always draw your proofs first, if possible; because on the proofs the whole cause depends, and consequently the brief cannot be well prepared until the proofs are known; and in a complicated case, it is materially necessary, and is extremely useful, to annex an epitome of the dates and facts in their order, with references to the several parts of the brief, by way of index.

23. Deliver the briefs to counsel, and appoint a consultation with them, if necessary.

What is the meaning of a consultation?

When is it necessary to be fixed?

Who attend it?

24. Attend the consultation, but previously to going to consultation, go through, consider, and note down, and when at consultation bring under discussion, the best and worst points of the case, the law, and the evidence, and consider the best course to take on the trial; and give your counsel an insight into the character of the witnesses, and how far each may be relied on, and whether to be treated with caution or otherwise.

25. Draw copy and serve a notice to produce deeds, papers, &c. as the case may require.

Why is a notice necessary? What should it contain? When, and on whom, should it be served?

26. Attend the trial, having all the dates,

and points, and witnesses, written in a compressed note, ready to refer to, in order to answer any questions of the Court, or of counsel, or to remind counsel.

N. B. Be particular in your attendance at the Court, and keep your witnesses always together, and run no risk.

What is the meaning of a trial? Who presides? What is the form and order of proceeding on a trial? What counsel opens the pleadings? Who opens the case and evidence? Who calls and examines the witnesses for the plaintiff? Who cross-examines them? Who opens the case and evidence of the defendant? Who calls the defendant's witnesses? Who examines and cross-examines them? Who replies to the defendant's case, and when is no reply allowed? Who charges the jury, and what is meant by the charge? Who decides the cause? Who finds the verdict, and who records it? What is the meaning of nonsuit, and how does the nonsuit take place?

27. Draw and ingross *postea*.

What is the meaning of *postea*?

28. Make out a full bill of costs to your client, and select such part as is to be charged to the adverse party.

What is the difference of costs as between attorney and client, and between party and party?

29. Draw, ingross, and swear affidavit of increased costs.

What is the meaning of increased costs?

What should the affidavit contain?

30. Give notice of taxing costs to the opposite party.

What time is necessary to be given of taxing costs?

31. Tax costs.

What is meant by taxing costs? When, and by whom, are they taxed?

32. Enter final judgment.

What is the meaning of final judgment? How is it entered, and by whom, and where?

33. Issue execution.

What is the meaning of execution? How many sorts of executions are there, and when and how are they issued, and their return enforced?

COURTS FOR THE RECOVERY OF SMALL DEBTS.

AMONGST the various plans which from time to time have been proposed in lieu of Local Courts, it may be useful to present our readers with the following heads of a Bill for the more easy and speedy recovery of Debts under 15*l.* in the superior Courts at Westminster.

First.—That all actions for the recovery of debts above 2*l.* and under 15*l.*, shall commence by the defendant being served with a copy of a declaration, in the nature of a plaint, to be issued out of the Court of King's Bench, Common Pleas, or Exchequer, with a notice to appear and plead thereto, stating the residence of the plaintiff, and the amount of the debt sought to be recovered: the form of the declaration to be given in the schedule of the act.

Second.—That a precipe shall be filed with the proper officer of the Court in which the suit is commenced, who shall sign the declaration with his seal of office. Service to be good if left at the defendant's place of business or dwelling-house, with his wife, child, or servant, of at least fifteen years of age, fourteen days before the return; or if served personally, service one week before the return to be sufficient.

Third.—That all process under the act shall be returnable before the Chief Justice of the Court of King's Bench or Common Pleas, or Chief Baron of the Exchequer, on the first Wednesday in every month.

Fourth.—That a rule to plead shall be given, and the defendant shall plead within four days after the return of the declaration, or final judgment may be signed.

Fifth.—That if there shall be no plea, final judgment may be signed; an affidavit being first made of the service of the declaration, and the amount of the debt due, upon which the costs shall be taxed, and an execution issue; the affidavit to state the belief of the party, (if not served personally), that the defendant has had notice of the declaration, or that he keeps out of the way to avoid the same.

Sixth.—That if the defendant resists the plaintiff's demand, he shall plead the general issue, with a notice that he intends to give special matter in evidence; as a set-off—bankruptcy—the statute of limitations—or a tender, &c. And if the special matter be a set-off, a copy of the particulars to be delivered with the plea. The service of such notice to be proved by an affidavit of its delivery.

Seventh.—That upon a plea being received, ten days' notice of trial shall be given, and a record made up as a writ of inquiry, to be directed to the sheriff, and executed in the same manner as writs of inquiry now are.

Eighth.—That the causes shall be tried before the under sheriff, or sheriff's substitute, in the

second week in every month, except those months in which the assizes are holden.

Ninth.—That the sheriff shall appoint one or more substitutes for the trial of causes, in such towns and districts within his county as shall be ordered and appointed by the Judges at the assizes; and such substitutes shall have an office in those towns and districts for entering the causes; the same to be entered three days exclusively before the trial. But no sheriff's substitute shall, by himself or agent, act as attorney for plaintiff or defendant, in any cause to be tried before him, or any other person, within ten miles of his residence, or place of business, or town for which he is appointed.

Tenth.—That upon the return of the inquisition, a rule for judgment shall be given; and if no cause shewn within four days, the costs to be taxed by the proper officer of the Court, and execution issue.

Eleventh.—That no writ of error shall in any case be brought, and no new trial shall be allowed, except upon the party applying giving security to pay the amount of the verdict, and double costs, if a defendant; and if plaintiff, double costs in both trials, in the event of a second verdict against him.

Twelfth.—That a Judge at chambers shall have a controul over the proceedings by summons, with power to give time, not exceeding two months, to pay the debt and costs; also to change the venue, grant a new trial, and make such orders therein as he shall think fit.

Thirteenth.—That if any cause shall be tried before any of the Judges at Nisi Prius, either in London or Westminster, or at the assizes, which in the opinion of such Judge ought to have been tried before the sheriff, the Judge in his discretion may deprive the plaintiff of the benefit of any costs, and give to the defendant double costs.

Fourteenth.—That no cause of action shall be split, but a party may waive a part of his demand, so as to bring it within 15*l.*, giving notice in his declaration of so doing.

Fifteenth.—The operations of the act to be restricted to three years.

The preceding outline of a Bill was intended to be submitted to Parliament some time ago. Among the advantages to be derived from its adoption are—

1. A great saving in the amount of legal expenses.
2. The speedy termination of the proceedings.
3. No additional burthen occasioned by the creation of new officers, as the proceedings will be conducted under the controul of the Judges, by the attorneys of the superior Courts.
4. The compensation of the present officers, for the diminution of their fees, will be of very moderate amount, inasmuch as the new proceedings will pass through the old offices.
5. The trial by jury will be retained.

LAW OF ATTORNEYS.

No. VI.

RIGHT TO PRACTISE IN THE EQUITY
EXCHEQUER.

THE important judgment lately given respecting the right of solicitors to conduct a suit in the Court of Equity in the Exchequer, which was reported in the Supplement for November (p. 79) has since appeared in the Reports of Mr. Tyrwhitt and Messrs. Crompton and Jervis. It has been held by Lord Lyndhurst and the other Barons, that a solicitor of the Court of Chancery may conduct a suit in the former Court in the name of a clerk in the King's Remembrancer's Office, although he is not admitted a solicitor in that Court. The most important part of the judgment of Lord Lyndhurst is as follows :

"When the question came before me at the Equity Sittings at Gray's Inn Hall, on exceptions to the Master's report, I felt governed by *Vincent v. Holt*, 4 Taunt. 452; but my attention being afterwards addressed to § 27 of 2 Geo. 2, c. 23, I had so much doubt on the construction of the act, that I suggested the propriety of taking the opinion of the whole Court upon it. It has now been argued before us with considerable learning; and, after elaborate researches on both sides, looking at the act of 2 Geo. 2, c. 23, independently of the 27th section, I entertain considerable doubts whether the decision of Lord Loughborough, in *Meddowcroft v. Holbrook*, 1 H. B. 50, was not correct. The clauses relating to the admission and enrollment of *attorneys*, are the same as those relating to the same requisites of *solicitors*; but in § 10, it is in terms provided, that an attorney (sworn, admitted, and enrolled) as such in any of the superior Courts of common law at Westminster, Wales, or the counties palatine, may, by consent, in writing, of another attorney, in any of the said other Courts, practise in the name of that other. It seems to me, that by the wording of the original clauses, the legislature did not consider themselves as precluding a solicitor of one court of equity from practising in another like Court, with the consent of a solicitor of the latter Court. If that be so, the §§ 5 and 7 being similar, and it not being necessary that there should be another clause for solicitors, like § 10; because solicitors do not practise in their own names, but in those of the Clerks in Court of the Court of Equity, it does not seem to follow, that a solicitor admitted and enrolled in one Court of Equity, should be precluded in practising in another Court of similar jurisdiction, in the name of another solicitor of the latter Court. One difficulty arises out of § 21, *vis.*, the privilege given to a solicitor, admitted and enrolled in one Court of Equity, to be admitted and enrolled as such in another, without paying fees. It seems, that no advan-

tage would be conferred on the solicitor if Lord Loughborough's construction of the act is adhered to; for if he could practise here in the name of a Clerk in Court, he could obtain no benefit by being admitted in the Court of Equity here; and the section applies to many other Courts of Equity, of which we are little informed. It is not necessary to decide on that; we are more called on to decide on *Meddowcroft v. Holbrook*, and the subsequent case in the Common Pleas, of *Vincent v. Holt*. I say it is unnecessary to decide the general question, for many regulations in the act apply to the Exchequer, and the legislature had this Court in view in the framing it. [His Lordship here discussed the particular sections of the act.] What are the officers of the King's Remembrancer? They are the sworn and side clerks, who execute the equity and revenue business. Now these persons are not admitted and enrolled according to the 2 Geo. 2, c. 23, but in the manner accustomed before that act. How, then, were the attorneys or clerks of "the office of Pleas of the Court of Exchequer" (that is, the four sworn attorneys) admitted and enrolled? Not under this act, but according to the former custom prevailing in this Court before 11 Geo. 4, and 1 W. 4, c. 70. The 2 Geo. 2, c. 23, sec. 27, next provides, that these attorneys and clerks may practise in other Courts, in the names, and with the consent in writing, of attorneys of such other Courts. Then the concluding words of the section are material expressions in this case; *vis.*, that it shall be lawful from and after the 1st December, 1730, for any person who shall be sworn, admitted, and enrolled an attorney or solicitor in any of the several Courts before mentioned, according to the direction of this act, to practise and solicit in the said *respective offices*, in the same manner as heretofore has been done, anything *hereinbefore contained*, or any law or statute to the contrary notwithstanding. In what offices? In the Office of Pleas, and in the Office of the King's Remembrancer. We know that attorneys of other Courts practised in the Office of Pleas, in the names of the attorneys of the Court, to the fullest extent; *vis.*, up to the termination of the causes by final judgment, and not in the limited manner contended for in support of the motion. That, then, is the construction put on this section by practice; nor is any thing produced to the contrary. Next, what has been the usage in the King's Remembrancer's Office? The equity and revenue business is conducted there by the same persons, and many attorneys practise in the name of a sworn clerk in Court, not merely in the limited manner I have alluded to, but up to the period of the decree. This case, then, is specially provided for in the Exchequer; and a solicitor, admitted in the Court of Chancery, may, in the name of a sworn clerk of the Court of Equity in the Exchequer Chamber, carry on a suit to its final termination, without enrolment or admission in the latter Court. Such has been the constant usage, and our decision is warranted, as well by the act of 2 G. 2, as by

the custom which has prevailed since that reign. Nothing, then, will be taken by this motion. But though it may be usual that the party failing in an exception to the Master's report shall pay the costs of that proceeding, still, as there was so much doubt that I directed a second argument; and as my first opinion was adverse to that now entertained by the Court on § 27, they will not be granted in this case. *Attorney-General v. Malin and others*, 2 Tyr. 519. S. C. 2 C. & J. 500.

REMARKABLE TRIALS.

No. XXIII.

CASES OF COLEMAN, AND OF WELCH, JONES, AND NICHOLS, FOR MURDER. 1748.

RICHARD COLEMAN, who had received a decent education, and was clerk to a brewer, was indicted for murder at the Kingston assizes in 1749. He had a wife and several children. The murdered person was Sarah Green, who, having been with some acquaintance to a bean-feast in Kennington Lane, staid to a late hour, and on her return towards Southwark she met with three men, who had the appearance of brewers' servants, two of whom lay with her by force, and otherwise used her in a most inhuman manner. While in the hospital she declared that the clerk in Taylor's then (Berry's) brew-house was one of the parties who had treated her in so infamous a manner; and it was supposed that Coleman was the person to whom she alluded.

Two days after, Coleman and one Trotman happened to be at a public house, when a stranger asked several questions of Coleman; first, as to a robbery, and then of the transaction in Kennington Lane. Coleman, who was intoxicated, and felt affronted by the insinuations, swore at the stranger, and to all his enquiries said, "what is it to me; what of that." A short time afterwards Trotman and another man charged Coleman before a magistrate with the offence.

The magistrate, who does not seem to have supposed that Coleman was guilty, sent for him, and hired a man to attend him to the hospital where the wounded woman lay; and a person pointing out Coleman, asked if he was one of the persons who had used her so cruelly. She said, she believed he was; but she declined to swear positively. Some time afterwards, Coleman was again taken before the magistrate, when nothing positively being sworn against him, the justice would have discharged him, but Mr. Wynne, the master of the injured girl, requesting that he might once more be taken to see her, a time was fixed for that purpose, and the justice took Coleman's word for his appearance.

The accused party came punctually to his time, bringing with him the landlord of an alehouse where Sarah Green had drunk, on the night of the affair, with the three men who really injured her; and this publican, and

other people, declared on oath that Coleman was not one of the party.

On the following day the magistrate went to the hospital, to take the examination of the woman on oath. Having asked her if Coleman was one of the men who had injured her, she said she could not tell, as it was dark at the time; being called in, an oath was administered to her, when she swore that he was one of the three men that abused her. Notwithstanding this oath, the justice, who thought the poor girl not in her right senses, and was convinced in his own mind of the innocence of Coleman, permitted him to depart, on his promise of bringing bail the following day to answer the complaints at the next assizes for Surrey: and he brought his bail, and gave security accordingly.

Sarah Green dying in the hospital, the coroner's jury sat to inquire into the cause of her death: and having found a verdict of wilful murder against Richard Coleman, and two persons then unknown, a warrant was issued to take Coleman into custody. Though he was conscious of his innocence, yet such were his terrors at the idea of going to prison on such a charge, that he absconded, and secreted himself at Pinner.

A proclamation was issued, offering a reward of fifty pounds for the apprehension of the supposed offender; and to this the parish of St. Saviour, Southwark, added a reward of twenty pounds. Coleman read the advertisement for his apprehension in the Gazette, but was still so thoughtless as to conceal himself; though perhaps an immediate surrender would have been deemed the strongest testimony of his innocence; however, to assert his innocence, he caused the following advertisement to be printed in the newspaper:—

"I, Richard Coleman, seeing myself advertised in the Gazette, as absconding on account of the murder of Sarah Green, knowing myself not any way culpable, do assert that I have not absconded from justice; but will willingly and readily appear at the next assizes, knowing that my innocence will acquit me."

Strict search being made after him, he was apprehended at Pinner, above mentioned, on the 22d of November, and lodged in Newgate, whence he was removed to the New Gaol, Southwark, till the time of the assizes at Kingston, in Surry; when his conviction arose principally from the evidence of Trotman, and the declaration of the dying woman. Some persons positively swore that he was in another place at the time the fact was committed; but their evidence was not credited by the jury.

After conviction Coleman behaved like one who was possessed of conscious innocence, and who had no fear of death for a crime which he had not committed. He was attended at the place of execution by the Rev. Mr. Wilson, to whom he delivered a paper, in which he declared, in the most solemn and explicit manner, that he was altogether innocent of the crime alleged against him. He died with great resignation; lamenting only the distress in which he should leave a wife and two children.

About two years after Coleman's death, it was discovered that James Welch, Thomas Jones, and John Nichols, were the persons who actually treated Sarah Green in the inhuman manner, which occasioned her decease. These offenders had been acquainted from their childhood, and had kept the murder a secret, until it was discovered in the following manner: While Welch and a young fellow named James Bush, were walking on the road to Newington Butts, their conversation happened to turn on the subject of those who had been executed without being guilty; and Welch said, "among whom was Coleman; Nichols, Jones, and I, were the persons who committed the murder for which he was hanged." In the course of conversation Welch owned that, having been at a public house called Sot's hole, they had drunk plentifully, and on their return through Kennington Lane, met with a woman, with whom they went as far as the Parsonage Walk, near the church yard of Newington, where she was so horribly abused by Nichols and Jones, that Welch declined offering her any further insult. Bush did not at that time appear to pay any particular attention to what he heard; but soon afterwards, as he was crossing London Bridge with his father, he addressed him nearly as follows: "Father, I have been extremely ill; and as I am afraid I shall not live long, I should be glad to discover something that lies heavy on my mind." Accordingly they went to a public house in the Borough, where Bush related the story to his father, which was scarcely ended, when, seeing Jones at the window, they called him in, and desired him to drink with them. He had not been long in their company, when they told him they heard he was one of the murderers of Sarah Green, on whose account Coleman suffered death. Jones trembled and turned pale on hearing what they said; but soon assuming a degree of courage, said, "What does it signify? The man is hanged, and the woman dead, and nobody can hurt us?" To which he added, "We were connected with a woman, but who can tell that was the woman Coleman died for?"

In consequence of this acknowledgment, Nichols, Jones, and Welch, were soon afterwards apprehended, when all of them steadily denied their guilt, and the hearsay testimony of Bush was all that could be adduced against them; Nichols, however, was admitted evidence for the crown; in consequence of which, all the particulars of the horrid murder were developed. The prisoners being brought to trial at the next assizes for the county of Surrey, Nichols deposed, that himself with Welch and Jones, having been drinking at the house called the Sot's hole, on the night that the woman was used in such an inhuman manner, they quitted the house in order to return home, when meeting a woman, they asked her if she would drink; which she declined, unless they would go to the King's Head, where she would treat them with a pot of beer. Hereupon they went, and drank both beer and Geneva with her; and then all the parties going forward to the Parsonage Walk, the poor woman was

treated in a manner too shocking to be described.

It appeared that, at the time of the perpetration of the fact, the murderers wore white aprons; and that Jones and Welch called Nichols by the name of Coleman; circumstances that evidently led to the prior conviction of the unfortunate man, as it caused the dying girl to mistake their persons. On the whole state of the evidence there seemed to be no doubt of the guilt of the prisoners; so that the jury did not hesitate to convict them, and sentence of death passed of course. They were executed on Kennington Common, 6th September, 1751.

PARLIAMENTARY REPORT.

ABSTRACT OF THE REPORT FROM THE SELECT COMMITTEE ON QUAKERS' AFFIRMATION. DATED THE 11th FEB. 1833.

THE Committee have discovered one case only in which the question of the admissibility of a Quaker to take his seat in Parliament, on affirmation, has come before the House. This was the case of John Archdale, Esquire, who was returned as a Burgess for the Borough of Chiping Wicombe, in the 10th year of King William the Third. The particulars of this case the Committee afterwards advert to; but they first distinguish the Acts of Parliament which preceded, from those which followed, the decision of the House in that case.

The Committee then proceed to state, in chronological order, the different Acts of Parliament which have any bearing upon the question, either as containing special provisions relating to Quakers, or as prescribing the oaths to be taken by Members of Parliament.

There is no trace (says the Report) of any oath being required to be taken by Members of the House of Commons, upon taking their seats in the House, previously to the Acts of 5 Eliz. c. 1, and the 7 James 1, c. 6, which directed the oaths of supremacy and allegiance to be taken before the Lord Steward; but these provisions have been repealed by 1 & 2 W. 3, c. 9.

The first enactment relating to Quakers (since repealed by 52 G. 3, c. 155) was the 13 & 14 Car. 2, c. 1, "To prevent the mischiefs and dangers that may arise by certain persons called Quakers, and others, refusing to take lawful oaths;" and it imposed a penalty of 5*l.* for refusing to take lawful oaths; a further penalty for a second offence; and banishment for the third.

By 16 Car. 2, c. 4, § 16, which con-

tinued in force for three years, the further penalty of transportation was enacted for any refusal to take a judicial oath.

Then followed the 30 Car. 2, stat. 2, which prescribes the oaths to be taken by Members at the Table of the House. It provides, that if any Member who shall not have taken the oaths, and made and subscribed the declaration, shall come into the King's presence, he shall incur all the pains and penalties mentioned in the act.

The next statute is the 1st William and Mary, sess. 1, cap. 1, which alters the form of the oaths of allegiance and supremacy.

The 1st William and Mary, c. 18, commonly called the *Toleration Act*, followed, in which the affirmation of Dissenters from the Church of England, who scruple the taking of any oath, is, for the first time, legally recognized. The 7 & 8 W. 3, c. 34, comes next, by which "the solemn affirmation of the people called Quakers shall be accepted instead of an oath, in the usual form;" but it provides, that no Quaker shall give evidence in any criminal case, or serve on juries, or bear any office or place of profit under government.

These are the whole of the acts noticed by the Committee, prior to Archdale's case, which is entered in the Journals of the House, 3d January, 1698-9; and Mr. Archdale having answered, "that in regard to a principle of his religion he had not taken the oaths, nor could take them," the House ordered a warrant for a new writ.

The subsequent Statutes are as follow:

13 Wm. 3, cap. 4, which continued the former act.

13 Wm. 3, cap. 6, which prescribed the oath of abjuration.

6 Anne, cap. 23.

1 Geo. 1, s. 2, c. 6, by which it is enacted, that in all cases wherever the effect of the abjuration oath may be legally required of the Quakers, they shall make a declaration.

8 Geo. 1, cap. 6, granting the Quakers "such forms of affirmation or declaration as may remove the difficulties which many of them lay under."

The 12 Geo. 2, c. 13, enabled Quakers to be inrolled as *attorneys*, upon taking a solemn affirmation.

22 Geo. c. 2, c. 46, allowed Quakers to make affirmation in cases where an oath shall be required, except in criminal cases, and serving on juries; and holding places of profit under Government were also excepted.

33 Geo. 2, cap. 20, relates to the oath of qualification of Members to sit in the House of Commons.

6 Geo. 3, c. 53, alters the oath of abjuration.

34 Geo. 3, c. 73, for administering oaths and declarations to *voters* at elections, is the act now in force, under which the declaration or affirmation of a Quaker is taken.

9 Geo. 4, c. 32, enables Quakers and Moravians to give evidence upon their affirmation in all cases, criminal as well as civil.

Such are the statutes passed since Archdale's case, which the Committee bring under attention. No parliamentary decision has ever been given on their construction and effect. But the Committee met with the following decisions:

Rex v. Morris, 1 Raym. 337, where a Quaker was allowed to make his affirmation, on being admitted as a freeman of the City of Lincoln. The same case is reported in 5 Mod. 399, and 12 Mod. 190.

In *Rex v. Turkey Company*, 2 Burr. 943, a *mandamus* was granted to admit a member into the Company, who had tendered 20*l.* as the act directs, and to make his affirmation.

There are other cases at common law, and particularly *Atcheson v. Everit*, Cowp. 282; in which the Court of King's Bench, on a very full examination of the subject, evinced a disposition to put an enlarged and liberal construction upon the statutes.

Evidence was also adduced before the Committee, of Quakers having, in several instances, been admitted to the *Bar*, on taking affirmations to the effect of the oaths, before the Benchers of the respective Inns of Court, and before the Judges in Westminster Hall.

The first instance of the kind occurred before Lord *Ellenborough*, in 1818; when he treated the question as free from doubt, on the ground that the affirmation Acts made only three exceptions, and that the station of a barrister not falling within the exceptions, was clearly within the remedy provided by those acts.

It was also stated to the Committee, that since the repeal of the Test and Corporation Acts, a Quaker had served the office of Sheriff of the city of York, on his affirmation; but it did not appear whether the regularity of the proceeding was made the subject of judicial investigation.

PROPOSAL FOR THE REPEAL OF THE DUTIES ON THE CERTIFICATES OF ATTORNEYS AND OTHERS.

To the Editor of the Legal Observer.

Sir,

It has long been matter of astonishment, to many gentlemen of the first eminence in the profession, that the selection of certain individuals for taxation, comprising attorneys, solicitors, proctors, clerks in court, conveyancers, and special pleaders, made by the legislature many years ago, but certainly upon most groundless, unjust, and unworthy motives, should have been, and be continued to be, patiently borne by this industrious and useful class of the community.

The chief and almost only argument that is ever used in support of this singular and invidious tax, is the ill-considered one of its tending to make the objects of its severity more *honest and respectable*; and if it were likely to produce such an effect, no person of character or proper feeling, could find fault with it: but is not this a gross error, and contrary to all reason and experience? Is it probable, or even according to the common course of human nature possible, that the impoverishing of a hard working person, let his profession or calling be what it may, shall have the effect of making him more honest in his dealings? The reverse of this proposition is exactly and invariably the case; for poverty, in nine cases out of ten, is the propelling cause to acts of dishonesty and crime.

Upon what fair, liberal, or just grounds therefore, I would ask, are certain particular classes only of the industrious part of the community to be taxed? It is undoubtedly for the benefit of society, that the members of all professions and trades, as well as all other persons, should be as respectable and honest as possible: but why should a partial experiment of this kind be practised upon one or two professions only? That it has been submitted to patiently, and almost without a murmur, for upwards of twenty years, is surely no good argument for the continuance of it.

The profession of attorneys and solicitors, it is notorious, has for ages, and until very recently, laboured in an unprotected state, both with the community at large, and the legislature. Latterly, however, the members of it have been deemed entitled to something like just and liberal attention; and under the advice and sanction of the present Lord Chancellor, the Lord Chief Justice, and the Attorney General, His Majesty has been graciously pleased to grant to them a charter of incorporation, which was a far more likely mode of rendering the profession respectable, than that of imposing a grievous and invidious burthen upon them. And now, Mr. Editor, as we are at length in a condition to make our wants and grievances respectfully but firmly known to government, by petitioning in our corporate capacity, I would humbly suggest to the leading members of the corporation (through the medium of

your excellent work), the propriety of an immediate application to the House of Commons, for the redress of the evil here complained of.

Such a legitimate and creditable use of the power now vested in the corporation, would doubtless receive the universal approbation of its members; and if followed up by energy and perseverance, could scarcely fail to obtain that degree of attention and success, to which it honourably and impartially lays claim.

S. C.

NORTHERN AGENTS SOCIETY.

We have great pleasure in recording that an elegant Silver Salver was, at the last General Meeting of the Northern Agents Society, held at the Freemason's Tavern, on Thursday the 7th instant, presented to Charles Clarke, Esq., of Lincoln's Inn Fields, as a mark of the high estimation in which he is held by his professional brethren. The Salver is beautifully embossed, and has engraved upon it the arms of Mr. Clarke, and, underneath, the following inscription:—

PRESENTED BY THE SOCIETY OF NORTHERN AGENTS
TO
CHARLES CLARKE, ESQ.

In testimony of their admiration of his unwearied and valuable services, gratuitously bestowed, as their Secretary, during a period of thirty years, and as a tribute of their individual esteem and regard.

7th February, 1833.

PURCHASERS OF ESTATES IN IRELAND.—JUDGMENTS.

THE Act of 9 G. 4. c. 35, "to protect purchasers for valuable consideration in Ireland against judgments *not revived or re-docketed* within a *limited time*," will come into operation on the 27th of June next.

The following are the provisions of the Act:—

1st. That judgments obtained after the passing of the Act, shall be null and void, as against purchasers of lands in Ireland, unless duly revived or re-docketed within twenty years before the execution of the conveyance, mortgage, &c.

2d. That all judgments obtained in Ireland within twenty years before the passing of the Act, shall in like manner be null and void, unless revived or re-docketed within twenty years before the execution of conveyance, &c.

3d. That all judgments obtained in Ireland twenty years or upwards before the passing of the Act, shall in like manner be null and void, unless duly revived or re-docketed within five years from the passing of the Act.

ANECDOTES OF LORD ERSKINE.

It is singular, but it is matter of fact, that there are persons who have a passion for being at law, and contrive to be never out of it. Of this description was a Mr. Bolt, a wharfinger on the Thames. In the cause-paper of the sittings after every term, Bolt's name regularly appeared, either as a plaintiff or a defendant. In a cause at Guildhall, Mingay was counsel against him, and spoke of him in very harsh terms for his dishonest and litigious spirit. Erskine was counsel for him: "Gentlemen," says he to the Jury, "the plaintiff's counsel has taken very unwarrantable liberties with my client's good name. He has represented him as litigious and dishonest: it is most unjust. He is so remarkably of an opposite character, that he goes by the name of *Bolt-up-right*." This was all invention.

The following anecdote of Erskine is of the same stamp. A Mr. Ripplingham, an old attorney, from the east end of the town, was one of his clients. He was a worthy and old-fashioned man, attached to the style of dress of his younger days, and retaining it unaltered, in despite of the changes of fashion of modern times. His whole dress was for that reason grotesque, but his wig particularly so. It had two large side curls, and a queue or pigtail of at least the length of eighteen inches appended to it. This hung half way down Ripplingham's back, and was the subject of a constant joke by Erskine, with his old client, as he sat in court before him. A cause was tried at Guildhall while Ripplingham was so seated. The principal witness was a very eminent surveyor near Gray's Inn, a Mr. Wigg. His name was much dwelt upon by Bearcroft, in urging the credit due to him. When Erskine got up for the defendant: "Gentlemen," says he, "you have had quite enough, I think, of the wig, and thereby hangs a tale (tail)," says he, at the same time seizing Ripplingham's pigtail close to his poll, he cocked it upright at the back of his head with ludicrous effect.

The most trifling incident which could raise a laugh never escaped him. He could not resist the opportunity of a joke whenever it presented itself, nor let it pass, under circumstances where it might have been spared: it was sometimes too ludicrous for the gravity of the cause in which he introduced it. In an action for *crim. con.*, in which he was counsel for the plaintiff, the evidence in mitigation of damages was, that the plaintiff's wife was incurably addicted to the immoderate use of spirituous liquors: that the defendant indulged in the same propensity, and that an intimacy was by that means created in the enjoyment of their congenial tastes. "I admit," says Erskine, "that is some proof of there being a *cordial* affection between them."

These anecdotes the fastidious eye may glance over as trifling, and they deserve no higher title; but from such trifling much of the na-

tural character of him who stoops to it is to be collected. They are not given as specimens of brilliant wit, but as illustrations of Erskine's temper and manners. They at least serve to shew, that to the superior talents which he possessed, he added a buoyancy of mind, which could stoop to trifle and be playful in the midst of business. The influence which his conduct had on the practice of the *Nisi Prius* Court, was strongly felt by the counsel who belonged to it. It produced that good temper and feeling, so that no harsh or peevish altercation passed from one to the other.

The gravity of Lord Kenyon was not proof against the lively sallies of Erskine's imagination. He was particularly partial to him, and always heard him with an attention marked by kindness. Erskine occasionally played on his partiality, but which the Chief Justice always took in good part. When any matter of law was started at a trial, Lord Kenyon pricked up his ears, and prepared his note-book to take down the point with great formality. In an action for an assault, which was tried before him at Guildhall, the plaintiff, who was a man of great size and bodily power, kept a public-house of some notoriety, called the Cock, at Temple Bar. It was a house much frequented by country attorneys. A spruce little member of that profession came one evening into the public room, booted and spurred, as if just come off a journey. He took his seat in a box, but soon became so noisy and troublesome, that the other guests wished to have him turned out, and called on the landlord (the plaintiff) to do so. He approached the little lawyer with great courtesy, and gave him notice to quit, by informing him of the wishes of the rest of the company, and of his intention to carry them into effect. The lawyer demurred to the law of the landlord, and insisted on his right to the possession of his box, the house being a public one. He valiantly declared that he was inflexibly determined to defend his possession, unless evicted by force, and at the same time assumed an attitude of gallant defence. The landlord, acting under the authority of an *habeas corpus* of his own issuing, without further ceremony took possession of the person of his puny antagonist, by catching the little man up in his arms, and bearing him in triumph towards the door. The publican's embrace, which resembled the friendly hug of a bear, roused all the indignant energies of the lawyer; and being furnished with no weapon of defence except his spurs, he sprawled, kicked, and spurred so violently, that the knees and shins of the host of the Cock, to which only his legs reached, were covered with blood. For that the action was brought; and the defendant pleaded that the plaintiff had made the first assault on him, by forcibly taking him in his arms and turning him out of doors.

Erskine defended him. He described the combat in the most ludicrous terms, and with assumed gravity appealed to the Jury, if instinct had not pointed out to every animal the best means of its defence; that his client

had no weapon of any sort to oppose to the violence of the plaintiff, except his spurs, and which he had, therefore, lawfully used for self-defence. The turn which Erskine's manner of treating it gave to the case, caused much laughter in the Court, and he was not disposed to stop it. To the law cited on the other side, he said he would oppose a decisive authority, from a book of long standing, and entitled to the highest credit. Lord Kenyon, expecting that some text-book or Reporter was going to be cited, took up his pen and put himself into the attitude for taking down the point. "From what authority, Mr. Erskine?" said the Chief Justice: "From *Gulliver's Travels*, my lord," was the reply. The effusion of this specimen of the bathos caused much laughter.

This anecdote is certainly open to the imputation of being a piece of the *desipere non in loco*; but it was suggested by the whimsical contrast in appearance of the plaintiff and the defendant, then on the floor, which presented at the moment the burlesque representation of Gulliver dandling in the arms of his Brobdignag friend.—*From Fraser's Magazine.*

LEGAL OBITUARY.

1832.

May.

25th.—Sir William Grant, Knight, formerly Master of the Rolls, aged 83.

30th.—Sir James Mackintosh, Knight, formerly the Recorder of Bombay, aged 67.

June.

2d.—Charles Butler, Esq. one of His Majesty's Counsel, aged 82.

September.

Sir Albert Pell, Knight, one of the Judges of the Court of Review, aged 64.

William Cooke, Esq. one of His Majesty's Counsel, aged 75.

Jeremy Bentham, Esq. one of the Benchers of Lincoln's Inn.

October.

10th.—James Stephen, Esq. late one of the Masters in Chancery, aged 74.

November.

4th.—The Right Hon. Charles Lord Tenterden, Lord Chief Justice of England, aged 72.

December.

21st.—William Bray, Esq. F. S. A. the senior of the Solicitors, the Historian of Surrey, and Editor of the Memoirs of Evelyn.

* * We invite communications from the friends and relations of deceased members of the profession, in order that our future Obituary may be more full and complete.

BARRISTERS CALLED.

Hilary Term, 1833.

LINCOLN'S INN.

Anthony Crofton, Esq.
Thomas Harris, Esq.
Hugh Ker Cankrien, Esq.
Francis Stark Murphy, Esq.
Edward Sandford, Esq.
Robert James Mackintosh, Esq.
Thomas Henry Whipham, Esq.
Thomas Lewin, Esq.
William Holloway, Esq.
Francis Henry Goldsmid, Esq.

INNER TEMPLE.

Charles Constable, Esq.
Charles Erdman Petersdorff, Esq.
Henry Augustus Thompson, Esq.
George Frederick Louper, Esq.
Charles Favell Forth Wordsworth, Esq.
William Palgrave Simpson, Esq.

MIDDLE TEMPLE.

Henry Horn, Esq.
Philip Bockett Barlow, Esq.
George James Farside, Esq.
Charles Tooke, Esq.
Thomas Streathfield Lightfoot, Esq.
John Sheffield, Esq.

ATTORNEYS TO BE ADMITTED,*Easter Term, 1833.**Clerks' Names.**To whom articulated.*

Adam, Benjamin, Homerton, Middlesex.
 Allen, Edward, Cheadle, co. Stafford.
 Amos, George, John Street, Bedford Row.

Andrew, William, Wirksworth, Derby.
 Arrowsmith, Joseph, Cross Street, Hatton Garden.
 Atkins, Frederic, of No. 44, Horsleydown Lane.
 Atkinson, Joseph, Carlisle.
 Aston, George, 7, Dorset Place, North Clapham Road.

Ballachey, George, Finsbury Circus.

Bell, Richard Boulby, York.

Bicknell, Christopher, 46, Regent Street, Piccadilly.

Bird, William Frederick Wratishaw, 9, Red Lion Square.

Bircham, Francis Thomas, Southampton.

Boobier, Samuel, No. 1, Bank Chambers.

Bourne, Henry Titus, Alford, Lincoln.

Bowser, Richard, Wilmington Square.

Bowlby, John Russell, Bishopwearmouth, Durham.

Brice, William, of Bristol.

Burder, Henry Hardcastle, Hackney, Middlesex.

Cave, Charles, Finsbury Circus.

Cavell, Charles, Stockbridge, Hants.

Christmas, John William, 10, Gray's Inn Square.

Churchill, James, Poole.

Clitherow, Richard, No. 43, Chancery Lane.

Clough, Thomas, Blackburn, Lancaster.

Cooch, Robert, Newport Pagnell, Bucks.

Cook, William, Kingston-on-Hull.

Cowland, John Lethbridge, 11, Southampton Row.

Day, John Nash, Red Lion Square.

Dixon, George Read, 51, Upper Stamford Street.

Dobie, John, 43, Exmouth Street, Wilmington Square.

Drake, Nathan, Northallerton, York.

Eastwood, Wm., Holmfirth, York.

Evans, John Llewellyn, 10, Old Change, London.

Daniell, Edward, Colchester, Essex.

Hubbard, George, Cheadle.

Bond, John James, Folkestone, Kent; assigned to Jones, John Oliver, John Street, Bedford Row.

Andrew, John, Wirksworth, Derby.

Wright, Henry Robert, Eustatia, Stockton, Durham.

Gunner, William, Bishop's-waltham, Hants; assigned to Atkins, Thomas, of Torquay.

Hodgson, William, Carlisle.

Aston, Henry, No. 2, New Broad Street.

Ballachey, George Baker, Holt, Norfolk; assigned to Bridger, Edward, Finsbury Circus.

Richardson, Edward, Witherby, York, deceased; assigned to Singleton, William, of York.

Bowden, John Saunders, Aldermanbury.

Bird, Adam Yates, Kidderminster, Worcester.

Gunning, Francis John, Cambridge; assigned to Barney, John, Southampton.

Tucker, William Owen, of Bank Chambers.

Bourne, Titus, Alford.

Bowser, Richard, Bishop Auckland, deceased; assigned to Meredith, Spencer Newcomb, Lincoln's Inn.

Anderson, Henry, South Shields and Bishopwearmouth.

Brice, Wm. Diaper, Bristol.

Bromley, Joseph Warner, Gray's Inn.

Prickett, William Henry, Odiham, Southampton.

Busigny, William, Stockbridge.

Dax, Thomas, Lincoln's Inn Fields.

Foot, John, of Poole.

Clitherow, Robert, Horncastle, Lincoln.

Eccles, William, Blackburn.

Cooch, George, Newport Pagnell aforesaid.

Walker, Thomas, York; assigned to Thompson, Thomas, Sculcoates, York.

Lethbridge, Christopher (since deceased), Lethbridge, John King, and Gurney, Charles, all of Launceston, co. Cornwall; now a pupil with John Wilson, 14, Gray's Inn Square, Esq. Barrister at Law.

Drew, Beriah, Bermondsey.

Dawes, Thomas, Angel Court.

Dunn, George, 5, Raymond Buildings; assigned to Bell, Alfred, 47, Lincoln's Inn Fields; and by him assigned to Birkett, John, 3, Cloak Lane.

Walton, John Sanders, same place.

Stephenson, William, Holmfirth.

Wilde, Edward Archer, 21, College Hill; assigned to Rees, John, 21, College Hill.

Clerks' Names.

To whom articulated.

Evatt, Robert John Cludd, Ealing, Middlesex.
Everitt, Edwin Church, Inner Temple.

Ferns, Thomas Morten, Stockport, Chester.

Floyd, Cookson Stephenson, Holmfirth.

Galbreath, John, 23, Craven Street, Strand.

Gally, George, New Inn.

Genn, William James, Falmouth, Cornwall.

Grantham, Wilkinson, 25, Villiers Street.

Gregson, William, 3, Denmark Row, Cold Harbour Lane.

Guest, John, Inner Temple.

Hardy, Mitchell Charles, 46, Salisbury Square.

Hare, Richard, 29, Ironmonger Lane.

Heath, Edward, Manchester.

Heffill, Henry, the younger, 5, Took's Court, Chancery Lane.

Helps, Richard, 18, Crawford Street, St. Mary-lebone.

Hewney, George, Grantham, Lincoln.

Hilton, William Foord, 119, Jermyn Street.

Hooper, John, Bath.

Holmes, Nathaniel, the younger, 43, Bread Street.

Hood, John Acrownan, 3, New Ormond Street.

Hookey, George Randle, Duke Street, Portland Place.

Hopkinson, Francis, 1, Garden Place, Lincoln's Inn Fields.

Hudson, Charles, Heaton Norris, Lancaster.

Hunt, James, Cambridge.

Hughes, William John, 3, Torrington Street, Torrington Square.

Hutchinson, Henry, Buckingham Street, Strand.

Johnson, Edward William, Chichester, Sussex.

Kaye, Thomas, 9, Skinner Street, Snowhill.

Lambert, William, the younger, Exeter.

Lanwane, Nicholas, 10, Wilmot Street.

Lanton, John Pierson, Pickering, York.

Llewellyn, Henry, the younger, 29, Noble Street, Cheapside.

Lock, Robert, 34, Kenton Place, Pentonville.

Lowe, John, 45, Great Ormond Street.

Lumb, Henry, the younger, Alford, Lincoln.

Lyne, Edward, Borough of Liskeard, Cornwall.

Knight, William, Kensington.

Cory, Robert the younger, of Great Yarmouth; assigned to Turner, James, Inner Temple.

Winterbottom, John Kenyon, Heaton Norris Lancaster; assigned by the Executor of Newton, Thomas, late of Heaton Norris &c. deceased.

Stephenson, William, Holmfirth.

Cowling, Samuel, York.

Parr, Robert Hemming, Poole, Dorset.

Messrs. Pender and Genn, Fulmouth.

Sallwood, Henry, Horncastle, Lincoln.

Bury, John Bewdley, Worcester.

Rawlins, John, Birmingham; assigned to Gregory, John Swarbreck, Bedford Row; and by him assigned to Taylor, Edgar, Inner Temple.

Pemberton, Edward Leigh, 46, Salisbury Square.

Turnley, Joseph, 29, Ironmonger Lane.

Chew, William Christopher, Manchester.

Brightwell, Thomas, Norwich.

Seymour, William, Margaret Street; assigned to Wilson, Ralph, late of Margaret Street.

Manners, Thomas, Grantham.

Martineau, Philip, Carey Street.

Hardy, Edward Webb, Bath; assigned to Watts, Philip Henry, Bath.

Holmes, Nathaniel, Pocklington, York.

Heaven, Cam Gyde, Bristol.

Rhodes, Thomas, Davies Street, Grosvenor Square.

Forbes, William, New Sleaford, Lincoln.

Harrop, John, Stockport.

Tabram, Richard, Cambridge.

Woodrooffe, W., 1, New Square, Lincoln's Inn; assigned to Capes, George, Raymond Buildings; and by him assigned to Vizard, William, 61, Lincoln's Inn Fields.

Faber, Thomas Henry, Stockton, Durham.

Price, John, same place.

Rathbone, Samuel, Bolton, Lancaster.

Ford, Henry Melhuish, Exeter.

Cleane, John, City, Hereford.

Pierson, Thomas, same place.

Llewellyn, Henry, same place, deceased; assigned to Newbon, James Shelton, 2, Great Carter Lane; and by him assigned to Davies, James, 4, King's Arms Yard.

Lock, William, Pembroke; assigned to Allen, Joshua Julian, of Great Ormond Street.

Norris, Robert, Liverpool.

Lumb, Henry, the elder, Wakefield; assigned to Bourne, Titus, Alford.

Lyne, Benjamin Hart, Liskeard aforesaid.

388: Attorneys to be admitted in Easter Term.—Bankruptcies superseded.—Bankrupts.

Clerk's Names.

To whom articulated.

Maltby, Thomas James, 11, Tokenhouse Yard.
 M'Curdy, John Williams, 7, Park Place, Regent's Park.
 Miles, John Henry, Leicester.
 Mitton, Thomas, 20, May's Buildings, St. Martin's Lane.
 Moon, James, 6, Gray's Inn.
 Moorman, James Bennetto, Plymouth, Devon.
 Moreton, Samuel Holland, Rose Place, Liverpool.
 Murley, John Bullock, Brixham, Devon.
 Nettleship, George, Stratton St. Mary, Norfolk.
 Nichols, John, Leigh Street, Burton Crescent.
 Nugee, Francis James, the younger, Bruton Street, Berkeley Square.
 Offley, George, Henrietta Street, Covent Garden.
 Orton, John Swaffield, Essex Street.
 Overton, Henry Clifton, York.
 Paske, George, 79, Baker Street, Portman Sq.
 Palmer, Arthur, Gray's Inn.
 Parker, Joseph, Horsham, Sussex.
 Perks, John, East Retford, Nottingham.
 Perrin, James, Stroud, Gloucester.
 Pilkington, George, Chichester.
 Postlethwaite, John Bateman, 17, Clement's Inn.
 Powell, Jonathan Rogers, Haverfordwest.
 Price, William Evan, 4, Warwick Court, Holborn.
 Price, Arthur Munton, Ashby-de-la-Zouch, Leicester.
 Prichard, George Berry, 61, Lincoln's Inn Fields.
 Pryer, Thomas, No. 4, George Terrace, Park Road, Peckham.
 Pyke, John (no residence entered).
 Pyne, William, 2, Old North Street.

Cotterill, William Henry, 32, Throgmorton Street.
 Beavan, John Phillips, 30, Sackville Street.
 Miles, Samuel, Leicester..
 Molloy, Charles, 8, New Square, Lincoln's Inn.
 Bayley, William, Stockton-upon-Tees, Durham.
 Tocker, Henry, Plymouth.
 Burtley, William, Liverpool; assigned to Rowlinson, Frederick, Liverpool.
 Slade, John, Yeovil; assigned to Wolston, Richard Walter, Brixham aforesaid.
 Twiss, George Joseph, Cambridge; assigned to Calver, Daniel, Stratton aforesaid.
 Galsworthy, John, Cook's Court.
 Rowley, George William, Saville Place.
 Allen, Charles Pettitt, Carlisle Street.
 White, William Lambert, Yeovil, Somerset; assigned to White, Richard, Essex Street.
 Overton, George, York.
 Daniell, Edward, Colchester, Essex.
 Whishaw, Charles John, Gray's Inn.
 Willington, John Stark, Newport, Isle of Wight.
 Mee, John, East Retford.
 Hawkins, Henry, Stroud.
 Hearn, William, Newport, Isle of Wight.
 Walker, Michael, Whitehaven.
 Evans, Thomas, Haverfordwest.
 Smale, Charles, Bideford, Devon.
 Smale, Charles, Bideford, Devon.
 Pritchard, George, of same place.
 Gibbs, John, Rochester, now with Whitelock, John, 70, Aldermanbury.
 Welford, Richard, Marlborough, Wilts, deceased; assigned to Welford, Richard Griffiths, Marlborough aforesaid.
 Pinchard, William Pryce, Taunton; assigned to Pyne, John, Somerton, co. Somerset.

(To be continued).

BANKRUPTCIES SUPERSEDED.

From Jan. 22, to Feb. 15, 1883, both inclusive.

Aspinall, James, Liverpool, Banker.
 Brown, Charles, Tottenham Court Road, Dealer in China, Glass, &c.
 Croker, Edward, Lombard Street, Tobaccoist.
 Clarke, Arthur, Worcester, Brewer, Shopkeeper, &c.
 Gankrodger, Thomas, Huddersfield, Merchant.
 Lee, Wm. Arundel Street, Strand, Commission Agent and Broker.
 Millard, Stephen, Gloucester, Victualler.
 Pearce, Henry, Bishopsgate-within, Tavern Keeper.
 Power, Richard James White, Havant, Southampton, Pelt-monger, &c.
 Reynolds, Robert, Manchester, Cabinet Maker.
 Shaw, John, Great Saint Helena, General Dealer.
 Sandys, Thomas, Bell Court, Brooks-Market, Bookseller.

BANKRUPTS.

From Jan. 22, to Feb. 15, 1883, both inclusive.

Attwood, John, Winchcomb, Gloucester, Victualler. *Howard, Norfolk Street, Strand.*
 Alderson, Richard, Crawford Street, Marylebone, Linen Draper. *Jones, Size Lane; Lockington, Off. Ass.*
 Baker, Thomas, Rye, Sussex, Tea Dealer. *Amory & Coles, Throgmorton Street; Abbott, Off. Ass.*
 Brake, David, St. John Street, West Smithfield, Dealer in Beer. *Lewis, Crutched Friars; Green, Off. Ass.*
 Beale, Thomas, Birmingham, Saddler. *Amory & Coles, Throgmorton Street.*
 Busby, Augustin, Brighton, Builder. *Atree & Co., Brighton, Sowton, Great James Street.*
 Byrne, Charles Holtzendorf, Liverpool, Sail Maker. *Robinson, Liverpool; Blackstock & Bance, Serjeant's Inn, Fleet Street.*
 Birns, William, Manchester, Flour Dealer. *Darvill, Manchester; Hume, Southampton Buildings.*
 Brennand, William, and Co., Lever Banks, Lancashire, Ca.

Ilco Printers. *Easterby, Preston; Walsley and Co.,*
Chancery Lane.
 Blyth, Wm., Birmingham, File Manufacturer. *Norton &*
Chaplin, Gray's Inn; Staffs, Birmingham.
 Baker, John, Over Darwen, Lancaster, and William Harper,
 Manchester, Calico Printers. *Milne, Parry, & Co., Tem-*
ple; Grundy, Bury.
 Baron, James, Frome Selwood, Somerset, Innholder. *Per-*
kins & Frampton, Gray's Inn; Miller, Frome Selwood.
 Barnard, Alfred, Norwich, Money Scrivener. *Unthank, Nor-*
wich; Lythgoe, Essex Street, Strand.
 Bowditch, Wm., Exeter, Grocer. *Groom, Off. Ass.; Chester,*
Staple Inn.
 Brunt, Thomas Inman, Whittington, Derby, Tanner. Messrs.
Hutchinson, Chesterfield; Smithson and Co., New Inn.
 Cohen, Joseph Woolfe, Lower Ormond Quay, Dublin, and
 Bury Street, St. Mary Axe, London, Wholesale Jeweller
 and Factor. *Spyer, Broad Street Buildings.*
 Cogswell, James, Liverpool, Wharfinger. *Vicent, Temple;*
Bartley & Roberts, Liverpool.
 Cutlack, Wm., Littleport, Cambridge, Common Brewer.
Pickering & Co., Stone Buildings, Lincoln's Inn; Evans
and Co., Ely.
 Clark, Percival, Clement's Lane, Tavern Keeper. *Dunford &*
Robinson, George Yard, Lombard Street; Edwards, Off.
Ass.
 Colman, Samuel, Shottisham, Norfolk, Miller. *Colman &*
Cooms, Norwich; Mills, Brunswick Place, City Road.
 Clarke, Arthur, Worcester, Brewer of Ale, Shopkeeper, &c.
Becke, Son, and Co., New Inn; France and Hill, Wor-
cester.
 Cookson, Thomas, Staveley, near Kendal, Westmoreland,
 Manufacturer. *Wilson & Harrison, Kendal; Addison,*
Verulam Buildings, Gray's Inn.
 Coulthard, Ralph and Thomas, Crown Street, Finsbury,
 Woollen Drapers. *Abbott, Off. Ass.; Parker, St. Paul's*
Church Yard.
 Careless, Wm., New Road, Chalton, Kent, Cheesemonger.
Green, Off. Ass.; Whiting, London Bridge Foot.
 Clayton, Wm., Cheapside, Carpet Warehouseman. *Rout-*
ledge, Hamilton Place, New Road; Whitmore, Off. Ass.
 Constantine, Stephen, Sheffield, Manufacturer of Cutlery.
Tattershall, Great James Street; Palfreyman, Sheffield.
 Channing, John, North Petherton, Somerset, Victualler.
Stevens, Gray's Inn Square; Perkins, Bristol.
 Dore, Wm. Fred., Cooper's Row, Tower Hill, Wine Mer-
 chant. *Evans, Took's Court, Cursitor Street; Lacking-*
ton, Off. Ass.
 Duncan, David, Tooley Street, Southwark, Victualler.
Quillott & Co., Prospect Row, Dock Head; Kitchen,
Off. Ass.
 Doughty, Tho., Goodge Street, Tottenham Court Road,
 Chymist. *Scott, Lincoln's Inn Fields; Clark, Off.*
Ass.
 Drew, Rob., Great Sutton Street, Clerkenwell, Currier.
Gibson, Off. Ass.; Oakley, Long Lane, Southwark.
 Down, Wm., jun., Portsea, Southampton, Woollen Draper.
Wimburn & Co., Chancery Lane; Low, Portsea.
 Dollar, Wm., and Geo. Thomson, Bucklersbury, Manchester
 Warehousemen. *Green, Off. Ass.; Niss, Copthall*
Court.
 Edwards, Basset Clarke, and Robert Blakeway, Stourbridge,
 Worcester, Linen Drapers. *Grazebrook, Stourbridge;*
Jenkins & Abbot, New Inn.
 Earee, Wm., Birmingham, Victualler. *Clarke, Richards,*
& Co., Lincoln's Inn Fields; Colmore, Birmingham.
 Etches, Williamson, Doncaster, York, Auctioneer. *Scott,*
Lincoln's Inn Fields; Dawson, Epworth.
 Friend, Geo., Great Charlotte Street, New Cut, Lambeth,
 and Wigmore Street, Cavendish Square, Wine Mer-
 chant & Victualler. *Groom, Off. Ass.; Tilson & Co.,*
Coleman Street.
 Fletcher, Sam., Hackney Wick, Middlesex, Blanket Manu-
 facturer. *Edwards, Off. Ass.; Donns, Cornhill.*
 Furness, Matthew, Great Longstone, Bakewell, Derby,
 Cheese Factor. *Brattlebank, Winster; Holms & Co.,*
New Inn.
 Freeman, John, jun., Drayton, Somerset, Tinman and Sail
 Cloth Manufacturer. *Warren, Lincoln's Inn Fields;*
Messrs. Warren, Langport.
 Foster, John, Leeds, Printer and Publisher. Messrs. *Wood-*
house, Temple; Stott, Leeds.
 Grestorex, Tho., Albany Street, Regent's Park, Hay Sales-
 man. *Sylvester & Walker, Gray's Inn; Graham, Off.*
Ass.
 Gilbert, Tho., Birmingham, Coal Dealer. *Norton & Chaplin,*
Gray's Inn; Ingleby, Birmingham.
 Hooper, Wm., Farmington, Gloucester, Farmer. *Merry,*
Lincoln's Inn Fields; Mullings, Cirencester.
 Hearn, Geo., Maldon, Essex, Plumber, Glazier, &c. *Dig-*
by, Maldon; Messrs. Crick, Maldon; Tilsons & Co.,
Coleman Street; Whitmore, Off. Ass.
 Hamlin, Rich., Poland Street, Oxford Street, and Maddox
 Street, Regent Street, Tailor. *Edwards, Queen Street,*
Cheapside; Lackington, Off. Ass.
 Hollingsworth, James, Southsea, Hampshire, Printer, &c.
Bagus & Lambert, John Street, Bedford Row; Hoskins,
Portsmouth.
 Henzell, Joshua, Manchester, Glass Cutter. *Edge, Man-*
chester.
 Hall, John, Liverpool, Merchant. *Bardwell, Liverpool;*
Blackstock and Bance, Serjeant's Inn, Fleet Street.
 Hawkes, Tho. Tyrwhitt, Frome Selwood, Somerset, Money

Scrivener. *Perkins & Frampton, Gray's Inn; Miller,*
Frome Selwood.
 Hardcastle, Rob., West Smithfield, Plumber. *Gibson, Off.*
Ass.; Dickinson, Gracechurch Street.
 Hardiman, John and Wm., St. Dunstan's Hill, Lower
 Thames Street, Commercial and Ship Agents. *Tenant,*
Off. Ass.; Keene, Furnival's Inn.
 Hannum, Cha., Chippenham, Wilts, Carpenter and Whar-
 fnger. *Clarke, Richards, & Co., Lincoln's Inn Fields;*
Cooke & Sons, Bristol.
 Hills, Sarah, Hammersmith, Schoolmistress. *Hornby &*
Towgood, St. Swithin's Lane; Clark, Off. Ass.
 Ilbery, James, Doughty Street, St. Pancras, Merchant.
Palmer, France, and Co., Bedford Row.
 Innes, John, St. Mildred's Court, Merchant. *Edwards,*
Off. Ass.; Freshfield & Son, New Bank Buildings.
 Jones, Tho. Lloyd, Holyhead, Anglesey, Brewer. *Byrne,*
Cook's Court, Lincoln's Inn; Williams, Penrhos.
 Jacobbs, John, Coventry, and Will. Jacobbs, Nuneaton,
 Warwick, Ribbon Manufacturers. *Battye & Co., Chan-*
cery Lane; Craddock, Nuneaton.
 Jackson, Geo. Vernon, Chichester Place, Battle Bridge,
 Bookseller. *Starling, Leicester Square; Graham, Off.*
Ass.
 Johns, James, Devonport, Printer, &c. *Gilbard, Devon-*
port; G. Smith, Basinghall Street.
 Jones, Will. Robinson, Shad-Thames, Southwark, Lighter-
 man, &c. *Parmer & Co., London Street, Fenchurch*
Street; Canaan, Off. Ass.
 Joyce, Henry, Milford Lane, and Essex Street, Strand, Oil-
 man and Drysalter. *Walker, Austin Friars; Turquand,*
Off. Ass.
 Kerbey, Henry, Tottenham Court Road, Poulterer. *Seward,*
Furnival's Inn; Turquand, Off. Ass.
 Keyzar, Geo., Toxteth Park, near Liverpool, Timber Mer-
 chant. *Bristowe & Co., Liverpool; Swain, Stevens, and*
Co., Frederick's Place, Old Jewry.
 Lamport, Geo., Newgate Market, Salesman. *Blunt & Co.,*
Liverpool Street; Edwards, Off. Ass.
 Lewis, Henry Ilbery, Barbican, Tallow Chandler, Oilman,
 &c. *Adamsen, Ely Place; Clark, Off. Ass.*
 Lance, Wm., Lewisham, Kent, Victualler. *Whiting, Old*
London Bridge Foot.
 Leary, Daniel, Parliament Street, Surgeon. *Belcher, Off.*
Ass.; Hodgson & Burton, Salisbury Street, Strand.
 Mosely, Lewin, High Street, Shadwell, Staffordshire, Ware-
 houseman. *Niss, Copthall Court.*
 Matthews, Geo., Lawrence Pountney Lane, Wine and Spirit
 Merchant. *Belcher, Off. Ass.; Craft & Co., Bedford*
Row.
 Moxon, James, jun., Southampton, Chemist and Druggist.
Clarke, Richards, & Co., Lincoln's Inn Fields; Thorpe,
Portsea.
 Matterson, Edward, Leeds, York, Chemist and Druggist.
Strangways & Co., Barnard's Inn; Robinson, Leeds.
 Macuin, Meir, Finsbury Circus, Merchant. *Van Sanden,*
Old Jewry.
 Mander, Geo., Warwick, Coal Merchant. *Burbury & Lam-*
pray, or Heath, Warwick; Meyrick & Co., Red Lion
Square.
 Meredith, Abraham, Bristol, Coal Merchant. *Stevens, Gray's*
Inn Square; Haberfield, Bristol.
 Mercer, John, Liverpool, Joiner. *Rogerson, Liverpool;*
Adlington & Co., Bedford Row.
 M'Lean, James, Liverpool, Flour Dealer. *Lowndes & Robin-*
son, Liverpool; Taylor & Roscoe, Temple.
 Martin, Edward, and Thomas Cole Barker, Newcastle and
 Staffordshire Wharf, Regent's Park Basin, Cumberland
 Market, Marylebone, Coal Merchants. *M'Duff, Castle*
Street, Holborn; Graham, Off. Ass.
 May, Thomas, Chesterfield, Derby, Grocer. *Watson, Shel-*
field; Atkinson & Pilgrim, Church Court, Lothbury.
 Nelson, Gilbert, Woolwich, Currier. *Oakley, Long Lane,*
Southwark; Belcher, Off. Ass.
 Noel, Louis Jos. John, Carey Street, Lincoln's Inn, Scrivener.
Kitchener, Off. Ass.; Sylvester & Walker, Furnival's Inn,
and Canterbury.
 Neep, Wm. Edward John, Norwich, Silversmith & Jeweller.
Austin, Field Court, Gray's Inn; Gilman, Norwich.
 Nelson, Thomas, Stibbington, Huntingdon, Paper Manufac-
 turer. *Mes & Co., East Redford; Hawkins & Co., New*
Boswell Court.
 Pocock, Thomas, Speen, Berkshire, Sheep Dealer. *Rowland,*
Ramsbury; Hillier & Lewis, Raymond Buildings, Gray's
Inn.
 Parnell, Thomas, Manchester, Laceman, &c. *Potten, Man-*
chester; Johnson & Weatherall, Temple.
 Payne, John, Leicester, Dyer. *Poole & Co., Gray's Inn;*
Devis & Son, Bristol.
 Phillips, Margaret, Plymouth, Saddler. *Wimburn & Co.,*
Chancery Lane; Chapman, Devonport.
 Pullan, Robert, Hatfield, York, Carpenter. *Walker and*
Richards, Lincoln's Inn Fields; Beckitt, Thorne.
 Page, John, Birmingham, Tailor and Clothier. *Alexander &*
Co., Carey Street; Rogers & Co., Birmingham.
 Roberts, Richard, Birmingham, Plumber and Glazier. *Col-*
more, Birmingham; Clarke, Richards, & Co., Lincoln's
Inn Fields.
 Relfe, Samuel Scudamore, Bell's Buildings, Salisbury Square,
 Coal Merchant. *Webber, Caroline Street, Bedford Square.*
 Rowe, Will. Moorle, Stamford, Lincoln, Grocer. *Thompson*
& Son, Stamford; Clowes & Co., Temple.
 Rather, Will., Grantham, Lincoln, Scrivener. *Ostler & Son,*
Grantham; Mason, New Milman Street.

Swift, Thomas Crayden, Eastchurch, Kent, Victualler. *Aubrey*, King's Road, Gray's Inn; *Edmeades*, Sheerness; *Whitmore*, Off. Ass.

Samson, Samson, Stock Exchange, Capel Court, Bartholomew Lane, and Wandsworth Road, Broker. *Wolston*, Furnival's Inn.

Smeeth, Jonathan, Vauxhall Walk, Lambeth, Bricklayer. *Tilsons & Co.*, Coleman Street.

Scott, John, North Shields, Northumberland, Ship Owner, &c. *Clark*, Old Broad Street.

Scott, Thomas and John, Birmingham, Merchants. *Norton & Chaplin*, Gray's Inn Square; *Stabbs*, Birmingham.

Sanders, Edward, Worcester, Carpenter, Joiner, and Builder. *Wall*, Worcester; *Lownes & Gatty*, Red Lion Square.

Smith, Geo., Stoke Mills, East Stoke, Dorset, Miller. *Fox*, Finsbury Circus; *Durant & Welch*, Poole.

Stokes, Benjamin, Droitwich, Worcester, Chandler & Shopkeeper. *Hicks & Braikenridge*, Bartlett's Buildings; *Peters*, Bristol.

Sim, John, Whitehaven, Cumberland, Currier. *Stabbs*, Staple Inn; *Perry*, Whitehaven.

Spackman, Will. Frederick, Wharf Road, City Road, and Claremont Square, Clerkenwell, Oilman. *Groom*, Off. Ass.; *Howell*, Hatton Garden.

Tarrant, Samuel, Quadrant Hotel, Regent Street, Wine Merchant, &c. *Tennant*, Off. Ass.; *Turner*, Basing Lane.

Tidswell, Tho., and Tho. Thorp, Cheadle, Chester, Calico Printers. *Hampson*, Manchester; *Adlington & Co.*, Bedford Row.

Thomas, John, Walsall, Staffordshire, Grocer, &c. *Walker & Richards*, Lincoln's Inn Fields; *Thomas, jun.*, Walsall.

Wyatt, Benj. Deane, Augustus Street, Cumberland Quay, Regent's Canal Basin, Regent's Park, and Foley Place, Marylebone, Timber Merchant, &c. *Mayhew & Co.*, Carey Street; *Tennant*, Off. Ass.

Wyatt, Herbert, Northumberland Street, Marylebone, General Dealer. *Hudgson & Burton*, Salisbury Street, Strand.

Worth, Geo., Clerkenwell Green, Victualler. *Marson and Dudley*, Church Row, Newington, Butts; *Turquand*, Off. Ass.

Wood, Will., jun., Bognor, Sussex, Chemist. *Powder*, Clement's Inn; *Gibson*, Off. Ass.

Wood, James, Hood, in Austonley, Almondbury, York, Cloth Manufacturer. *Juques & Co.*, Coleman Street; *Forson & Kidd*, Holmfirth.

Wilson, John, Ernest Street, Regent's Park, Victualler. *Abbott*, Off. Ass.; *Beart*, Tokenhouse Yard.

Woods, James, Liverpool, Coal Merchant. *Mallaby*, Liverpool; *Chester*, Staple Inn.

Wright, John, Liverpool, Silk Merter and Draper. *Robinson*, Liverpool; *Blackstock & Banck*, Serjeant's Inn, Fleet Street.

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The Legal Observer.

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———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE REFORMERS OF THE LAW. No. II.

SIR MATTHEW HALE.

THE second example which we shall produce, of men who were at once technical Lawyers and Reformers of the Law, is Sir Matthew Hale; and we know not where to find a person more conspicuous for all the best qualities of the head and heart. We hold him up as an example for all lawyers, and his whole life peculiarly illustrates the object which we have at present in view—the proving that all the great and beneficial reforms in the law, have originated in, or been suggested by, lawyers. The principal events in the life of Sir Matthew Hale are probably well known to the reader. On the 8th of November, 1629, he was entered at Lincoln's Inn, and immediately devoted himself to the study of his profession. His application is remarkable, even among lawyers; giving, for some years, sixteen hours of the day to study, and during the whole course of his life, employing the greater part of his time in the acquirement of knowledge.

His memory is revered as much for his learning as his virtues and talents. He was a complete master of all the existing law of the country, and equalled Lord Coke in legal information, while he far surpassed him in genius.

He enjoyed at the bar an extensive and lucrative practice. In 1653 he was created a Puisne Judge of the Common Pleas by Cromwell, and was entreated to continue on

the bench by Lord Clarendon, on the accession of Charles II. He was afterwards made Chief Baron of the Exchequer; and in 1671 he was promoted to the office of Chief Justice of the King's Bench, which he held until 1675, when he resigned his office, and died shortly afterwards in 1676.

It will be seen, therefore, that his whole life was spent in performing the duties of his profession, and that if there be any necessary bias given to the mind by a life so passed, against alterations or reforms in the law, that the mind of Sir Matthew Hale must necessarily have received it. His works are well known to the profession. They are chiefly technical law books; his great performance being his celebrated Pleas of the Crown, which is the great text-book of the Criminal Law. He was revered, we are told by Lord Keeper North, for his "great learning in the history, law, and records of the English constitution." His whole life was passed in the habits and duties of a lawyer. Let us see, then, whether he ever shewed any dislike to the necessary reform of our laws, or any reluctance to assist in the good work of effecting the necessary and proper alterations which time rendered necessary.

Those who have perused his life will find, that not only was he willing to assist in this reformation, but that he proposed it himself, and laboured continually to effect its completion.

In 1651, Hale was appointed by the House of Commons, one of a committee to consider the reformation of the laws. It

appears in Whitlock^a, that they met several times, and desired the Judges, in their several Courts, to return to them a list of the officers in their Courts, *and what fees they receive, and what work and employment they do for the same*; and that they entered upon several heads of inconveniences in the law, in relation to estates in tail and copyhold estates; and that for the future they might be liable to the payment of debts. So that it would seem that the grievances now so strongly felt, were complained of, and attempted to be remedied, at least as far back as the time of Cromwell. This Committee made several propositions to Parliament; none of which, however, were acted on; partly, it is to be presumed, from the unsettled state of the existing government.

Hale also left behind him a tract, entitled, *Considerations touching the Amendment of the Law*; which has been printed by Mr. Hargrave, in his Collection of Law Tracts, p. 249; and if we were required to give a statement of our own opinions on the subject of Law Reform, we could not do better than reprint this excellent disquisition. It contains the true principles on which all law reforms should be conducted; and every word of it is as applicable to the present day, as to the times for which it was written. We shall attempt a short summary of its contents.

It treats of the several extremes relating to the amendment and alteration of the laws; and first, the extreme, "in the excess of over-hastiness and forwardness to alterations in lawes, and touching the reasons that ordinarily move men to the excess and itching after changes in laws." He reasoned, that every law that is old has the advantage over any new law, of being known; that time and long experience are much more ingenious, subtle, and judicious, than all the wisest and acutest wits in the world co-existing can be; that laws concern such multitudes, and those of various dispositions, passions, wits, interests, and concerns, that it is not possible to discover them all at once, or to provide for them in the constitution of a law; that an over-busy meddling with the alteration of laws introduces a great lubricity and unsteadiness in the law, and renders it subject to perpetual vicissitudes:—"When once this law is changed, why may not that which is introduced be changed? and so onwards, in perpetual motion:" that overmuch tam-

pering with the laws is commonly unacceptable to the people, and therefore it should be demonstrable that the change be for the better, and such as cannot introduce any considerable disadvantage "in the other end of the wallet;" "that the change, though most clearly for the better, be not in foundations or principles, but in such things as may consist with the general frame and basis of the government or law; and that the changes be gradual, and not too much at once."

The excellent author then points out the reasons which move men to "the itching for change in the laws;" and these he considers to be, 1. The general love of novelty. 2. Some personal mischief which the over-reformers have received by the present constitution of the law. 3. A want of a due consideration of the true state of all human affairs, and a conceit of framing laws and constitutions which shall be faultless; whereas all human laws must be imperfect. 4. The ignorance of the laws that are intended to be altered. "They think the laws are foolish, because, if they were reasonable things, they must understand them without study, as they do the force of an argument, &c.; and they think their reason is much undervalued, if it be told them the law is reason, and the law is thus; and they are presently apt to say they understand reason, and blame the law because they understand it not; when they think it is below them to be ignorant of any thing. And upon this account they will become Solons and Lycurgi." 5. An overweening esteem and valuation that a man many times hath of some pretty new expedient, that his own fancy, or the fancy of others, hath suggested, of something seemingly amiss in the law, without a due attention to the inconvenience which would attend such substitution. 6. Certain passions, which urge them to alter the law; as vain-glory, ambition, fear, envy, and malice.

But while all the evils of improper and useless innovation are pointed out, the evils of the other extreme are dwelt upon, in language, and enforced by arguments, as powerful. And first, the reasons which disincline men to all alteration are mentioned. They are these:—1. A superstitious veneration for the law, beyond what is just and reasonable. 2. An over-jealous fear, that some unthought-of inconvenience may emerge from the proposed change. 3. A timorousness to displease great officers of justice, "especially such as have paid dear for places of this nature; one of the greatest

banes to justice and necessary reformation."

4. A jealousy, that when once the change is begun, it may never end. 5. The failure of other schemes of reform.

The possibility of a judicious reformation is then pointed out. And *first*, it is proved that many useful reforms and changes have been introduced in former times, and been attended with great benefit. *Secondly*, That all human institutions are liable to decay, and require amendment; so that a great part of the reformation that is pleaded for, is not so much of the law, as of the abasement, corruption, delays, and exactions, that adhere to the law. *Thirdly*, That some parts of the law itself require reformation; and that laws are not made for their own sakes, but for the sake of those to be guided by them. *Fourthly*, That by length of time, laws become so numerous, that they must be reduced, to be manageable. *Fifthly*, That there are many mischiefs which may be effectually remedied; and, *Sixthly*, That if a judicious and reasonable change be not timeously made, an indiscriminate revolution of the laws must take place, and with the plausible pretence, that the judges and lawyers would not do it themselves.

Having laid down these general principles for the prosecution of a reform in the law, the author recommends, that "the judges, and other sages of the law," should prepare the necessary bills: and he then briefly points out the particular parts of our laws which most require amendment:—1. The revenue laws. 2. The present inconveniences relating to courts of justice, and in particular of the county courts and the Court of Common Pleas; and other matters, as to which, unfortunately, the manuscript from which the tract is printed is imperfect.

Thus, then, we see, that so far from being willing to leave the law as he found it, this great and good man laboured during his life to improve it, and left behind him a statement of those principles on which it may be beneficially altered in future.

THE PROPERTY LAWYER.

No. XII.

CANAL SHARES.

CANAL shares are considered as real estate, except they are declared to be personal estate by

the Act of Parliament establishing the canal. See *Buckridge v. Ingram*, 2 Ves. 652; *Knapp v. Williams*, 4 Ves. 403; *Earl of Portmore v. Bunn*, 1 B. & C. 699, 703. This rule is illustrated by a case in bankruptcy, which has been lately reported, which came before the present Master of the Rolls, and Lord Chancellors *Lyndhurst* and *Brougham*. In the judgment of Lord *Lyndhurst* the facts of the case are sufficiently detailed. It is briefly as follows:

Broekbank, Dilworth, and Company were bankers, carrying on business in the county of Lancaster. They were treasurers of the Lancaster Canal Company. The Lancaster Canal Company was incorporated by Act of Parliament, in the year 1792. They had the power of purchasing and holding lands for the purpose of that concern as a corporation. They held, and now hold, real property, and the proceeds arising from that concern are proceeds arising out of a real estate. For the purpose of carrying on the concerns, it became necessary to raise a certain sum of money. The sum of money was raised by subscription for shares; and the shareholders were entitled to be reimbursed, by the provision of the Act of Parliament, out of the profits of the concern. As the cause, therefore, thus stands, those profits which the shareholders are entitled to receive, are profits arising out of the real estates. But there is a clause in the Act of Parliament, by which the general law and the general rule in this respect is controlled. By an express provision in the act, couched in the most general terms, it is declared, that these shares "shall be considered as personal estate, and transmissible as such." Nothing, as I have before observed, can be more general than the terms; but it is contended at the bar, in the first place, that they were to be considered as personal, merely for the purpose of transmission to the personal representative of the shareholders; but the words do not authorize such a limited construction. The words are, that they "shall be personal estates, and be transmissible as such." It is contended that they are to be considered as chattels real. On what argument, however, that is founded, I find it difficult to collect. Why they should be considered as chattels real, or why the legislature, by these words, meant that they should be considered as chattels real, not having so expressed it, I find no means whatever of ascertaining. The persons who are shareholders are absolutely holders of the entire interest in the property, whatever that is: the legislature has declared it shall be personal estate, and there is nothing whatever in the Act of Parliament, that I can discover, at all controlling the effects of that provision. If that be so, the consequence follows, that this property, if held by the bankrupts at the time of their bankruptcy, would have passed to their assignees; but that is not the question in this case.

The question is, whether the property was under the order and disposition, not of the bankrupts (because Dilworth, one of the bankrupts, was a shareholder), but whether this property was under the order or disposition at all of Dilworth, as the reputed owner. Now the facts were these: at the time Dilworth and the partners became treasurers of the concern, they entered into a bond, in the penalty of 20,000*l.*, for the purpose of indemnifying the Company against any loss which might arise in consequence of their failing properly to account. In addition to this bond, Dilworth, who at that time was holder of 345 shares, transferred 300 out of the whole number to the Company, and at the same time executed a trust deed, by which the Company undertook to pay the dividends of the shares to Dilworth, until there should be some default in the accounts of the treasurer; and in case of any default, they were to have the power of selling the shares to the extent of making good the deficiency. By the provision of the Act of Parliament for the transfer of shares, a certain course is to be pursued; a particular form of instrument is to be executed, which is set out in the Act of Parliament. It is provided, that a duplicate shall also be executed, and that the duplicate shall be lodged with the committee or with the clerk of the committee, and it shall be entered in a book; and that, until these forms are complied with, the party is not to be entitled to receive any profits of the shares, or to act as a proprietor. And there is a further provision, that the names of the proprietors shall be entered in a book to be kept for that purpose by the clerk of the concern. In this case the provisions were not complied with; an instrument of transfer alone was executed, and that was delivered to the clerk. No duplicate was executed, nor entry made of the execution of the transfer, agreeably with the provision of the Act of Parliament. No entry whatever was made, indicating that Dilworth had ceased to be a proprietor; and it is quite obvious, as I collect from the transaction, that it never was intended he should cease to be apparent proprietor; it was intended that this should be a mere security in the hands of the company, to be made use of in case of default of the treasurers, and not otherwise. It is perfectly clear, therefore, taking the provision of the Act of Parliament and the trust deed, that during the whole of the period, and at the time of the bankruptcy, Dilworth was entitled to receive the dividends on his shares: it was perfectly clear also that he was entitled to a vote as a proprietor. There seems, therefore, as far as the public are concerned, to have been no alteration in the apparent situation of Dilworth; he had originally been a proprietor of these 300 shares, receiving the dividends, and voting as a proprietor; and those transactions which took place between him and the company, did not at all vary his apparent situation, for he was still on the books of the company as a proprietor. There is no entry of his having made any transfer of his shares; he was still entitled to receive his dividends, and still entitled to

vote as a proprietor. I should therefore consider that he had the order and disposition of this property as the apparent owner; and I think, under the circumstances, the property passed to the assignees. A case was cited, which at first view, without looking at the act of parliament, is a decision adverse to the opinion I am now pronouncing. The case to which I refer, is the case of *Vauxhall Bridge Company*, 1 G. & Jam. 10. In the act of parliament which established that company, there was a clause similar to that contained in the present act. When that case came before the *Vice Chancellor*, it is remarkable (according to the report of it), that it was argued by the counsel on both sides, upon the assumption that it was personal property. Not the slightest doubt is thrown upon that question in any part of the argument. It is assumed on one side, and assented to by the other, throughout, that it is personal property. After the argument it became necessary to refer a question to the Master, and the question was simply this; namely, "What shares were intended to be comprehended in the agreement?" The Master made his report, and the case came again before the Court, when the attention of the Court does not appear by the argument of counsel to have been directed at all to the general subject. The Court at the time, without having the act of parliament before it, declared the shares to be real estate; and in consequence of that, the observations to which I refer, were thrown out by the learned Judge, who presided on the occasion. It does not appear to me, therefore, that I am oppressed by the weight of that authority. I certainly should feel the weight of it, if I supposed at the time the attention of the Court had been directed to the clause in the act of parliament, to which I have adverted. I do not think, therefore, that the case can be considered, under the circumstances to which I have referred, as governing the case now before the Court. I am of opinion, therefore, that the shares, or rather the benefit of these shares, passed to the assignees of the bankrupt.

The opinion of Lord Brougham, C., was as follows:—

In this case I shall affirm the judgment of Lord Lyndhurst, which is appealed from. The Solicitor-General was kind enough to hand me up a case, laid before Mr. Bell. I thought, at the time the Solicitor-General read it, that the third section of the Vauxhall Bridge act had not been laid before his Honor the present Master of the Rolls. On reading the case myself, I am quite convinced it had not been brought before his Honour. This is quite clear, from the report of what fell from his Honor on that occasion. It does not support the decision of the *Vauxhall Bridge case*, which goes a great deal too far (and must be independent of that clause); it goes to this, that if there are shares of a trading company, and that trading company is possessed of an acre of real property, if it is a house where they carry on their business, or a cart-lodge next to the house, if they are seised of any real

property, the shares of each proprietor are not within the statute, but are excluded altogether. The petition was dismissed with costs. *Ex parte Lancaster Canal Company*, 1 Dea. & Ch. 411; S. C. 2 Mont. & Bli. 94.

The first reporters state, that the judgment of the present Lord Chancellor was decided at the moment when that learned Judge had for a short time resigned the great seal; and regret that his Lordship had not more time to bestow on it.

REVIEW.

A Treatise upon the Law of Annuities and Rent Charges. By William Golden Lumley, of the Middle Temple, Esq. Saunders and Benning, 1833.

THE Law of Annuities has never hitherto been completely digested or collected. Several works have been published on parts of the subject, and much light has been thrown on it in the laborious and useful notes contained in the first and second volumes of Mr. Bythewood's Conveyancing; but it remained for the present author to give a complete work on the subject; and we are now to enquire whether he has satisfied the demand which he has justly said exists, for "a regular treatise."

The first Chapter is devoted to the definition, nature, and properties of Annuities; Chapter 2, to the Parties; Chapter 3, to the Conveyance; Chapter 4, to the Registration; Chapter 5, to the Consideration; Chapter 6, to the Security; Chapter 7, to the Vesting, Extent, and Effect of Annuities; Chapter 8, to their Determination; Chapter 9, to the Grantees' Remedies; Chapter 10, to those of the Grantor; Chapter 11, to the Law of Evidence connected with them; with an Appendix of Statutes.

The work commences with an introductory essay, in which some general reflections are given. The author remarks, that it is singular that the system of lending money on annuities did not exist among the Romans. The granting of rent charges appears to have been pretty generally in use in England as early as the reign of Edward I., as the writ for the recovery of an *annuus redditus*, was then recognized as an existing common law remedy.

"Annuities, in their early introduction," it is observed, "were most frequently adopted as a mode by which the services of professional men

were retained. When the population was low, and enclosed in small towns at great distances from each other, and while the communication was difficult and dangerous, there could be but little inducement for the studious man to apply himself to the acquirement of knowledge in those professional departments which now produce ample recompense to the skilful and the prudent; or if there were any such persons, it was to be expected that they would be confined to the towns and cities, where they could alone hope for security and practice. In order, therefore, that the great lords and barons, who lived in their separate castles, might not be left destitute in their necessities of all whose services and assistance would be of value on emergencies of danger, they were compelled to adopt, as a mode of retainer, the granting of annuities to competent persons, for the advice which they should render whenever any occasion might arise to require it. Thus the chaplain, the lawyer, and the physician, had their annuities *pro consilio impendendo*, as was the phrase in the old law."

Mr. Lumley then gives a slight sketch of the history of annuities abroad and at home. He states, that the system of money lending on annuities was little in use before the latter end of the reign of Elizabeth; that in spite of the disapprobation of the Courts, it has gained ground since that period, although it was not legalized until the middle of last century. He then glances at the objections to the practice of raising money by annuities; and concludes by hoping that, at any rate, his labours may lead to "the production of another treatise, by one whose abilities, if not his diligence, may be greater."

Mr. Lumley then enters on his treatise. We have examined many of its chapters; and as far as we have seen, we think we may safely pronounce his work to be carefully and laboriously compiled. We have endeavoured to find a portion of it which would convey to the reader a fair idea of it, but have been unable to do so. The only material omission in it appears to us to be in directions for framing annuity deeds; but as Mr. Lumley is, we believe, not a conveyancer, he could hardly have added any thing new on this point. At p. 148, we find a new kind of authority cited, viz. the decisions of the Revising Barristers. It seems that Mr. Lumley, "in his revision of the lists of the northern division of Staffordshire," felt himself bound to hold the 3 G. 3, c. 24, virtually repealed by the 2 W. 4, c. 45. Now, with every respect to the Revising Barrister, we must beg to object to the authority of their decisions.

NEW CHAMBERS FOR THE JUDGES.

REPORT OF THE DEBATE ON PRESENTING
THE PETITION OF THE INCORPORATED LAW
SOCIETY OF THE UNITED KINGDOM.

House of Commons, Tuesday, Feb. 26.

Mr. Tooke.—“I am instructed by the Incorporated Law Society of the United Kingdom, to present their petition to this Honorable House on a subject of the utmost importance, as involving a more convenient and satisfactory administration of the law by the learned Judges, in one of the most useful practical departments of their public duty. I allude to their attendance at Chambers, to determine by summons on all interlocutory matters of practice and evidence, arising in the conduct of an action, previous to its trial.

“The petition states, that—

“In order to facilitate the administration of justice, one of the Judges of each of the three superior courts of common law is accustomed to attend daily in Serjeant's Inn, Chancery Lane, for the purpose of hearing and determining interlocutory matters in the progress of legal proceedings.

“That in consequence of several Acts of Parliament and rules of court, this class of business has greatly increased, and matters which the Judges are called upon to decide in the course of those attendances, are frequently of so much importance, that counsel are employed by each party to argue the same before them.

“That the rooms or chambers in which the Judges preside upon such occasions, are very old, dark, and incommodious, and wholly inadequate, in point of size, for the accommodation of the persons who are necessarily in attendance during the time of business; and the access to Serjeant's Inn is not only inconvenient, but often dangerous, from the narrowness of Chancery Lane, and its crowded state, occasioned by persons assembling there who have business to transact, as well as those who are passing and repassing in that public thoroughfare.

“That the room in which the Lord Chief Justice of England sits is only about eight feet high, twenty feet long, and twelve feet wide; and the offices of his Lordship's clerks, the only apartment in which counsel, and attorneys, and their clerks, and other persons in attendance, can assemble and wait for admission to the room of the Lord Chief Justice, is considerably smaller.

“That the rooms used by other Judges are of still less dimensions, and all of them are very inadequate and unwholesome, inasmuch as in Term time, 500 persons are frequently in attendance, and it is at all times with very great difficulty that persons can pass to and fro in the chambers to give attendance to the business they have to transact, and from the

crowded state of the chambers, many persons are obliged in all weathers to wait without the building, being unable to gain admission.

“That no dignitaries or officers of any Court of Justice in England are so badly or insufficiently accommodated as those of the three courts of common law in the instance explained by the petitioners.”

“A petition to the same effect was presented at the close of the last Parliament, by the then Member for Penryn, who I am proud to call my friend and zealous coadjutor in contributing to maintain the credit and respectability of our common profession. On that occasion, the petition met the unanimous and unsolicited support and sanction of honorable Members on all sides of the House. The honorable Member for Middlesex expressed his cordial concurrence in its prayer, from painful personal experience of the grievance complained of; and the noble Chancellor of the Exchequer only, and apparently with reluctance, interposed, as in duty bound, the chilling plea of economy.

“I am the last person in this House to underrate that plea: but my greatest inducement in its favor is the means it affords for a liberal outlay on a worthy national object; and what more worthy than giving adequate facilities to the course of public justice.

“The petition so sufficiently details the nature and extent of the inconvenience, as to leave me little farther to observe, than that the evil is of greater magnitude than the House or public are generally aware of. The business transacted at chambers materially tends to simplify the proceedings in Court, and thus to save money to the suitors, and time to all. Were the accommodation improved, so as to allow of the convenient attendance of counsel and attorneys, many rules and orders, which are now obtained by motion in Court, would be disposed of by a Judge at Chambers, at less than half the cost.

“I trust the noble Chancellor of the Exchequer will turn his attention to the subject, or instruct me how I may proceed, with his sanction, to adopt measures, by means of a select committee or otherwise, for obviating the evil without delay, and at the least expence.

“In conclusion, I would observe, that the Society from which this petition emanates, is composed of individuals best qualified from actual knowledge and experience, to appreciate the benefit to accrue to the public from the improvement they seek to effect; they have therefore considered it worthy of

constituting their first subject of application in their corporate capacity to this House; and thus best evince their anxious wish to fulfil the purposes of their charter, by coming in aid of every measure calculated to promote the interest of the suitor, by facilitating the conduct of business, and improving the standard of professional character."

Mr. *Hume* and several other Honorable Members corroborated and supported the object and prayer of the petition, which was ordered to lie upon the table.

ABSTRACT OF THE REPORT OF THE SELECT COMMITTEE ON PUBLIC PETITIONS.

THE practice of Parliament with respect to Petitions having become a subject of general interest to a large class of the profession, as well as the public in general, we subjoin an Abstract of the Report which has just been reprinted by order of the House of Commons.

The increase in the last fifty years of the number of Petitions is extraordinary. In the five years ending 1789, they amounted to 880 only; in the five last years there were 24,492. Some new arrangement for presenting them appears absolutely necessary. An attempt has been made, by balloting for members who should be entitled on each day to have precedence. But it appears that members have attended fourteen days in succession before their names were sufficiently advanced on the list to be called by the Speaker. There is no doubt, however, that although due time should be given to the consideration of Petitions, it is essential the public business should commence at an early hour.

The Committee, in their investigation of the subject, have adverted to the History of Parliamentary Proceedings.

From the reign of Edward the First, to that of Henry the Fourth, it appears, by the evidence of Mr. Palgrave, that ninety-nine in one hundred petitions presented to "the High Court of Parliament" (as it was then called) related to private grievances.

At the opening of the Parliament public proclamation was made inviting the people to prefer their complaints to this tribunal; and Receivers of Petitions were appointed for the

purpose of arranging and classifying them; separating those petitions which required the aid of the "King in Parliament" from others, to the complaints of which the ordinary tribunals were competent to afford redress. After some variations in the practice, the appointment of Receivers and Triers of Petitions regularly took place, and the form is still observed by the House of Lords at the opening of each new Parliament. The "Receivers" were usually the Clerks in Chancery. The "Triers" were Committees of Prelates, Peers, and Judges, with power to call to their aid the Lord Chancellor, the Lord Treasurer, and the Serjeants at Law. By them the prayer of the several petitions was inquired into, and the petitioners were referred, according to the nature of their respective petitions, either to the tribunals from which redress might be obtained, or if the regular course of law afforded no redress, to the High Court of Parliament.

The following are the recommendations of the Committee:

That a committee of the whole House should, on certain days of the week, sit in the House for the reception of public petitions. That the days and hours of meeting should be fixed either by the Speaker, or on motion in the House. That the chairman be appointed by the committee. No given number of members required to proceed. Members wishing to present petitions, to write their names, on the evening preceding, on a paper to be placed in charge of the clerk on the table of the House, and the names so written to be called in order. A second list may be inscribed after the chair has been taken, and proceeded with after the first list has been exhausted.

According to the evidence of Mr. Palgrave, the ancient course adopted with respect to petitions appears to have been as follows:

That no person shall come to Parliament as a suitor, or trouble Parliament, if on the face of his petition he could have right at home; if there was any other mode of obtaining redress he was not to apply to Parliament, but that if either from the poverty of the petitioner himself, the power of his adversary, the insufficiency of the law, or any other similar cause, he could not obtain redress, then the Supreme Court of Parliament was to give him a speedy and effectual remedy; and which was distinguished from the remedy at Common Law,—the term "Common Law" not being used in the confined sense that we give to it in the present day, but as indicating the ordinary mode of proceeding in the ordinary Courts of Justice.

In some cases, if it was oppression done to a poor man, the petition was transmitted to the Judges who would go to the next circuit, in order that the case might be tried before them, with the recommendation of its being thus transmitted by Parliament. They would remit

the fine on the original writ, and they would give beyond the ordinary power of the law remedies, if there was reason to suppose that the sheriff would be guilty of partiality in returning a jury.

Such was the course when the power of Parliament, as a remedial court, was at its height, in the reigns of Edward II. and III., as is evidenced by the general tenor of the petitions and the rolls. This course continued, without any substantial variation, until the time of Richard II. About that time the Courts of Equity (which were originally poor men's courts, Courts of Conscience, intended for the relief of those suitors who really could not get redress elsewhere) gradually grew up. In proportion as this channel enlarged, the number of parliamentary petitions decreased.

Equity continued to gain rapidly upon Parliament, and about the time of Edward the Fourth, when equity was fully established, the remedial jurisdiction of Parliament wholly ceased; and it does not appear to have been revived to any extent until the time of James the First. The House of Lords then began, to a certain degree, to revive their remedial jurisdiction. During the interval between the cessation of the remedial jurisdiction of Parliament and the reign of Elizabeth, the different courts which we now call Courts of Equity—the Court of Requests, which was in Whitehall, which is now the House of Lords, and the Court of the President and Council in the North—wholly supplied the place of the remedial jurisdiction of Parliament.

We have thus far given an Abstract of the Report and of some points of the Evidence, and shall probably revert to the latter, in which there are several other curious and interesting details.

DISPUTED DECISIONS.

No. XIII.

MODE OF SIGNING AGREEMENTS.

It has, for some time, been considered as a settled principle in equity, that in order that an agreement should be properly authenticated by the parties between whom it was made, it is necessary that their signatures should appear at the foot of the instrument. This doctrine is laid down in Fonblanque's Treatise of Equity, Vol. I. p. 179, and was apparently founded on the case of *Stokes v. More*, 1 Cox's Reports, 219. In that case, one of the parties (More) merely wrote his name, in an agreement, in this manner: "The lease renewed, Mr. Stokes to pay the King's tax; also to pay More 24*l.* a year, half yearly." This was not signed by either party; and a suit was instituted by Stokes to compel a specific per-

formance. The Lord Chief Baron and Mr. Baron Eyre delivered their opinions, and the other Barons agreed, "That the signature required by the statute is to have the effect of giving authenticity to the whole instrument; and when the name is inserted in such manner as to have that effect, it did not much signify in what part of the instrument it was to be found. But it could not be imagined that a name inserted in the body of an instrument, and applicable to particular purposes, could amount to such an authentication as the statute requires." Upon which the bill was dismissed.

The case of *Hawkins v. Holmes*, 1 P. Wms. 770, is somewhat similar to this, and was alluded to in the course of the argument on the case of *Stokes v. More*. Here the draft of an agreement had merely been altered in the handwriting of the defendant, but his signature or name did not appear. A bill was instituted to compel specific performance, but was dismissed.

In the first case, therefore, it was clearly laid down, that the insertion of the name of one of the parties, even in his own handwriting, in the body of the instrument alone, is not a sufficient authentication within the meaning of the Statute of Frauds.

I hope to shew that this decision is contrary to the principles of equity, and has been reversed by a recent decision.

Equity always acts upon the principle that all men shall be compelled to perform agreements to which they are bound by conscience or moral obligation; and in pursuance of this doctrine, will even waive some of the minor ceremonies which the law requires to give validity to the instrument. Now, who can doubt, that when two men solemnly enter into an agreement, and one of them writes his name in the body of the instrument evidencing that agreement, thereby giving a sanction to the act and authentication to the paper, that he is not as equally bound in conscience and justice to perform it, as if he had signed his name at the bottom of the writing; and the Statute of Frauds does not direct any particular place for the name of the party, it merely provides that the authentication shall be plain; but when the name of the parties appear in the instrument written by one of them, and the handwriting proved, who can say that the testimony of its being the agreement of the party who has written it, is not sufficient—is not enough to prevent the substitution of any fraudulent paper. But Courts of Equity, like those of Law, regulate their decisions upon precedents; and, in conclusion, I will mention one which bears directly on the principle I have mentioned, and completely contradicts and overrules it.

The case I allude to, is the case of *Proper v. Parker*, R. & M. 625. The defendant entered into an agreement with the plaintiff for the purchase of a house, and wrote the instrument himself, and stated his name at the commencement, thus: "*Mr. W. P. has agreed, &c.*" It was held, that this contract was good within the

Statute of Frauds, which only requires that the party sought to be "*charged, shall, by writing his name, have attested his entering into the contract.*"
H. C. T.

SELECTIONS FROM CORRESPONDENCE.

No. XXII.

STATUTES OF LIMITATION.

To the Editor of the Legal Observer.

Sir,

I WAS present on the hearing of a case to-day, before the Justices of Loughborough, and was not a little surprised at their decision. The point was, whether an information under the 56 Geo. 3, cap. 106, § 6, for putting out a parish apprentice without the consent of justices, whereby a penalty of 10*l.* is incurred, was within the 31st of Elizabeth, cap. 5, the penalty being at the disposal of the magistrates. It appeared to have been fifteen years since the offence was committed; and, on the part of the overseer, it was contended, the information should have been brought within a year. The magistrates, on a case in Buller, p. 196, held, that no suit by a party grieved is within the restraint of the statute, on the ground that the informer was a *party grieved*, the apprentice having served the latter part of his apprenticeship in the parish wherein the informer was an inhabitant, and having lately become a pauper, and been removed to such parish. I must confess I thought this rather overstrained, and that if there is no restraint to such kind of actions, it is high time there was. The King is bound; the party is bound in assumpsit in six years, and really an aggrieved party; and why is a supposed aggrieved one under a penal statute to have greater advantages? I have not the means of ascertaining how far the party was aggrieved in the case in Buller; nor would it become me to measure the quantum of injury to enable a party to become a common informer at any distance of time, when, as in this case, all the witnesses necessary for a defence are dead; but it occurs to me, that to entitle a party aggrieved to recover, it must be where the law gives him the whole penalty, and not in *qui tam*, or, as in the present case, where he has no control over the penalty, and cannot insist upon any part of it; and that, supposing a party aggrieved may, at any time, commence an action, it must be where the law gives him an absolute compensation for his grievance. Perhaps some of your subscribers will state what is meant by a "*party grieved*," and whether the case I have stated is, or is not, within the statute.
H. H.

REPEAL OF THE TAX ON ATTORNEYS' CERTIFICATES.

Sir,

I AM truly rejoiced to find, that our profession is at length awakened to a sense of the injustice and oppression it sustains by that vexatious, onerous, and degrading annual tax, the *certificate duty*, which it has so long groaned under. Indeed, with respect to myself (and I know that many members of our profession are in circumstances similar to mine), I am but too justly entitled to declare, that this heavy additional burthen to my other unavoidable outgoings, has caused me many a deep sigh, on account of my numerous family, whose only dependence is upon my small professional earnings, which, until within these two last years, did enable us, by God's good Providence, and our thrifty management, to keep clear of debt; but my income has never, since I took out my certificate, (just six years ago) exceeded 250*l.* per annum; and latterly, owing to the new regulations and alterations in practice, has not even reached that sum, and is manifestly decreasing in amount; and with the melancholy prospect, therefore, of a declining income and an increasing family, I cannot but contemplate a continuance of this exorbitant duty, in addition to the taxes which we all are liable to, with an aching and almost desponding heart.

Surely, Mr. Editor, it never could have been the intention of the legislature, when it imposed the present certificate duty upon us, to work so grievous an injustice and hardship, as to take *twelve pounds* a year from our hard earnings, let them be however minute. But such in truth is the case; for, be our annual incomes great or small, whether amounting to 2000*l.* or only 20*l.* this odious duty is still the same. And what justice or fair treatment is there in all this? Indeed it may with confidence be asked, where the honesty or justice lies in demanding this exclusive annual exaction from our profession. Do our wealthy merchants, bankers, brokers, or tradesmen pay a similar duty for the liberty of carrying on their trades? Do those, on whom an income tax like this might with a thousandfold greater advantage to the state at large, and with much more reason and fairness be laid, I mean such persons as are enjoying large fortunes, without the labour, care, and anxiety of earning them—Do these persons, the mere '*fruges consumere nati*,' the most idle, frivolous, and useless part of the community, contribute any such invidious, personal, and distinctive payment towards our country's wants?

These, and many other forcible reasons, induce me, Mr. Editor, to crave the valuable aid of your deservedly wide spreading Observer, towards the abolition of this cruel and iniquitous tax; a tax, be it remembered, petty in its aggregate, amounting only to about eighty thousand pounds, but grievously oppressive, and hardly to be borne by far the greater number, I fear, of the seven or eight thousand individuals from whom it has for

many years past been (inconsiderately I would hope, but) certainly most shamefully extorted.

The present Chancellor of the Exchequer is, it is generally believed, a highly honourable-minded man; and were he but aware of the partiality and unfairness of the tax here alluded to, he might feel disposed (now that he is about to remodel and more equitably adjust some of the taxes) to give this, at least, an attentive consideration; and I therefore most cordially join in the hint recently expressed by one of your correspondents, that this important matter should, without delay, be brought under the Chancellor of the Exchequer's notice, by our happily newly acquired mode of petitioning Parliament, under the common seal of the Incorporated Law Society.

S.

EXPIRED AND EXPIRING LAWS RELATING TO THE ADMINISTRATION OF JUSTICE.

From the voluminous Report of the Committee of the House of Commons, just printed, we extract the following:

Insolvent Debtors (England).

2 W. 4. cap. 44, and the previous Acts, to amend and consolidate the Laws for the Relief of Insolvent Debtors in England—will expire 1st June, 1835, and end of the then next Sessions.

Insolvent Debtors (Ireland).

2 W. 4. c. 38, and previous Acts, for the Relief of Insolvent Debtors in Ireland—will expire 23d May, 1833, and end of the then next Session.

Insolvents (East Indies).

2 W. 4. c. 43, to provide for the Relief of Insolvent Debtors in the East Indies—will expire 1st March, 1836.

Police Offices.

10 G. 4. c. 45, and previous acts, for the more effectual administration of the office of a Justice of the Peace in and near the metropolis, and for the more effectual Prevention of Depredations on the River Thames and its Vicinity, for seven years—will expire at the end of this present Session.

Creditors (Scotland).

54 G. 3. c. 137, continued by various Acts, the last being 2 W. 4. c. 35, for rendering the Payment of Creditors more equal and expeditious in Scotland—will expire 5th March, 1833, and end of the then next Session.

Seamen's Wages.

59 G. 3. c. 58, and 7 G. 4. c. 69, for facilitating the Recovery of the Wages of Seamen in the Merchant Service—will expire 2d July, 1833, and end of the then next Session.

Friendly Societies.

2 W. 4. c. 37, prolongs the 10 G. 4. c. 56, until 29th September, 1834.

Insane Persons.

2 & 3 W. 4. c. 107, for regulating the Care and Treatment of Insane Persons in England—will expire 11th August, 1835, and end of the then next Session.

SUPERIOR COURTS.

Rolls Court.

BOND.—JUDGMENT OF THE HOUSE OF LORDS NOT CONCLUSIVE.

An obligee in a bond, stated before the Master, under an order of reference in an administration suit, that it was given partly in consideration of money lent, and partly of services rendered to the obligor. The Master found that it was a voluntary bond—a gift. Upon exceptions, both by the obligee and executors of the obligor, to that report, the Court directed issues. Upon appeal to the House of Lords that order was reversed, and the Court ordered to decree upon the evidence before it. The Court accordingly decreed that the bond was for the greater part for indemnity, and partly for services. Upon appeal, the House of Lords reversed that decree, and affirmed the Master's report. The executors apply to the Court below, and are permitted to institute a suit to set the bond aside.

The circumstances of this very novel case, and the arguments heard upon it from time to time, may be sufficiently collected from the clear statement made by the *Master of the Rolls*, on the 12th of Feb. His Honor said,—This was a suit instituted for the administration of the estate of the late Lady Essex Ker, and under the usual decree a claim was made by Mr. G. Nicol (late of Pall Mall, bookseller), as creditor for the amount of a bond of 12,000*l.* with interest, at five per cent., executed by Lady Mary Ker and Lady Essex Ker, on the 15th of January, 1815. The claim being disputed, an order was made in the cause in April 1827, by which it was referred to the Master to inquire into all the circumstances under which the bond was executed. Mr. Nicol, examined upon interrogatories before the Master, stated that the bond was given to him by the two ladies, partly for services

performed, and partly for money advanced by him to them. It was insisted, on the other side, that the bond had been given to Nicol merely as indemnity for having joined with the ladies in a bond of the same date for 10,000*l.* to Messrs. Coutts, as a security for advances made by that firm to the ladies. The Master did not credit the evidence of Mr. Nicol, but found that the bond had been given to him without any consideration. Both parties were dissatisfied with the Master's report, and took exceptions to it. Nicol died in June 1828, before the exceptions were heard, and his representative having applied for liberty to withdraw the exception made by Nicol, and to acquiesce in the Master's finding, that permission was refused by me; and on the hearing of the exceptions, I directed three issues, to try whether the bond had been given for services performed or money lent, or whether wholly, or in part, as an indemnity in respect of the bond to Messrs. Coutts, or as a gift. That order was appealed from, and reversed by the House of Lords, who referred the case back to me to be decided upon the evidence as it then stood^a. The exceptions were again heard by me on the 10th of December, 1831, when I decided that, to the extent of 10,000*l.*, the bond was to be considered as a bond of indemnity in respect to the bond of Messrs. Coutts of the same date, and that the remaining sum of 2000*l.*, was to be taken as a gift to Nicol for services performed, the sum of 2000*l.* having been actually given by Lady Essex Ker to Nicol in her will. This decision was also appealed from to the House of Lords, and was, in July 1832, reversed by their Lordships, who ordered that the report of the Master finding the bond to be merely voluntary, should be absolutely confirmed^b. The petition now before the Court, prays that the plaintiffs may be at liberty to institute a suit for the purpose of impeaching the validity of the bond, upon the ground that if the bond were a voluntary gift, it ought to be set aside upon the doctrine of this Court which applies to parties standing in the relation of principal and agent. On the other side it is contended, that the petitioners are concluded by the judgment of the House of Lords. The proceedings under the reference to the Master have been attended with very singular circumstances. Nicol never rendered any account to the ladies of the sums stated by him, upon his oath, to have been advanced to them, and he was unable to state what was due to him at the date of the bond. He admitted that the bond was originally for 10,000*l.*,—which was the same sum as that for which the bond was given to Messrs. Coutts on the same day,—but that it was afterwards increased to 12,000*l.*, at the desire of Lady Mary Ker. Lady Essex Ker died in September 1829, and by her will gave a legacy of 2000*l.* to Nicol, expressly in consideration of his services. The singular conclusion to which the Master came,—namely,

that it was a gift to Nicol without any consideration, was supported by no statement or evidence, and was in direct opposition to the claimant's oath. On the argument of the exceptions, it appeared that Nicol's solicitor, who drew the bond under his instructions, was still living; and I therefore directed the issues, considering the case to be one which required investigation before a jury. It may be observed, that it would have been consistent with principle and practice, and would have saved a great expense to the parties, if the House of Lords—being in possession of the whole case, and having examined it so far as to decide that a satisfactory conclusion might be come to upon the evidence before me and them—had themselves come to that conclusion. In a letter from Nicol to one of the Ladies Ker, he states that when he became security for them on a former occasion, Messrs. Coutts had advised him to take a bond of indemnity. This was one, among many circumstances, which went to shew the real character of the bond. The House of Lords, however, has decided that the Master was correct in coming to a conclusion in favour of Mr. Nicol, which, for the reasons I have stated, appears to me to be wholly out of the question. I am not aware of the principles upon which the judgment of the House of Lords is founded; but it must be taken, henceforth, that the bond for a sum— which, with the interest, amounts now to 20,000*l.*,—was intended by Lady Ker as a gift to Nicol. The present petition proceeds upon the ground, that, admitting it to be a gift, the petitioners have never had an opportunity of impeaching it. It is most true that they have never had such opportunity, for Nicol claimed the bond, not as a gift, but as a bond for consideration. This being the case which the petitioners had to meet before the Master, it would be the height of injustice if they were to be concluded by the Master's report, upon a point not judicially before him, and to which his attention was never called, though it so happens that the judgment of the House of Lords has confirmed his decision. It appears to me, however, that the petition is not regular, nor necessary for the purposes of the petitioners. In the regular course, the cause would now come on to be heard for further directions upon the Master's report, when it will be the duty of the Court to direct such course of proceedings as may be necessary to promote the ends of justice. I am informed that Nicol's representative has presented a petition, the object of which is to have the Master's report confirmed, and the amount of the bond paid him. Let that petition be set down to be heard, together with the present petition, and the Court will hear what counsel have to urge as to the future course to be taken.

The two petitions were accordingly set down for hearing on the Thursday following; and upon argument it was agreed, that the petition of the plaintiffs in the suit be amended—to bring the whole question before the Court—so that the prayer might be, in the alternative, for a perpetual injunction to restrain Nicol's

^a See 2 Dow & Clark's Appeal Cases, 420.

^b See 1 Clark & Finnelly's Appeal Cases, 49; and Leg. Obs. Anal. Dig. 5.

representative from proceeding at law upon the bond, or for liberty to the plaintiffs to institute a suit to impeach its validity, as being executed by an employer to an agent.

Mr. *Pemberton* and Mr. *Rolfe*, for the petitioners, plaintiffs in the original suit, submitted, that the bond, taking it as a gift, could not be sustained upon equitable principles, considering the relation between the parties, and the circumstances under which the gift was made. The Ladies Ker lived in a state of entire seclusion from the world, and placed implicit confidence in Mr. Nicol, as their agent in all their pecuniary transactions. To support a gift under such circumstances, it was necessary that the agent should render an account to his principals of all transactions between them, more especially if the agent had lent money to his employers, which was the case alleged by Mr. Nicol. It was necessary, also, that the agent should acquaint his principals with all the consequences of such an obligation as that which these ladies were supposed to have entered into. So far were these requisites from being observed, that Mr. Nicol himself swore that he kept no account, and rendered none to the Ladies Ker; that they had no adviser except himself; and that his own solicitor prepared the bond. Mr. Nicol had also sworn that the bond was not a gift, but a bond in consideration of large advances made by him to the ladies; but that was a peculiarity in the case which they were now precluded from discussing, because the House of Lords had decided—in opposition to the claimant's oath—that the bond was a gift. The decision of their Lordships—that the Ladies Ker, though in distressed circumstances, had given Mr. Nicol a bond for 12,000*l.* without consideration, Mr. Nicol himself swearing expressly to the contrary,—was a decision which could no longer be questioned; the Court was bound to consider it a gift; but it was a gift, which upon the law of that Court, as applicable to transactions between principal and agent, could not be supported.

Mr. *Tinney* and Mr. *Wigram*, for the other petitioner, Mr. Nicol's representative, contended, that the Ladies Ker entertained a great regard for Mr. Nicol, and that they had determined the amount of their bounty without reference to any exact principle of calculation. With respect to the distressed circumstances of these ladies, it was true that their income was small; but they were engaged in litigating claims, the establishment of which could not be doubted, and which afforded them the prospect of a large property. It was also true that Mr. Nicol had insisted before the Master that it was a bond for consideration; but Mr. Nicol was as little acquainted with business as these ladies, and he did not use the term consideration in its legal sense, but with reference to the kind and grateful feelings which the ladies entertained towards him. The House of Lords had viewed the transaction in the same light, considering it to be a case of gift, and not for value.

The Master of the Rolls.—I have some

doubt whether I should do justice to this case, if I decided the question upon the facts before me, and as the inclination of my opinion would lead me to decide it. The Master has found that this bond is a bounty or gift to Mr. Nicol. The prayer of the plaintiff's petition is founded upon the fact, truly alleged by them, that no such question was ever raised before the Master. Mr. Nicol there, and here also, contended, that it was a bond for consideration, partly for services performed, and partly for various large sums advanced by him. On the other side, it was contended, that it was a mere bond of indemnity. Under these circumstances, neither party did, nor could, address either observation or evidence to the consideration of the Master, on the point upon which he thought fit to decide; namely, that the bond was intended as a gift. No person acquainted with the principles of justice, or the practice of any Court, can seriously contend that the extra judicial finding of the Master, is to bind the rights of the parties. I am of opinion, therefore, that the best course for the purposes of justice is, to direct that the representatives of these ladies shall be at liberty to institute a suit for the purpose of questioning the validity of the bond, considering it to be a bond intended as a gift or bounty to Mr. Nicol.

Garretty v. The Earl of Winchelsea, at the Rolls, February 14th, 1833, before M. R.

Note.—The title of this case, in the Reports of the Appeal Cases in the House of Lords, is *Nicol v. Vaughan*; and it is under that title it is referred to in our Analytical Digest, p. 5.

King's Bench Practice Court.

SURVEYOR OF HIGHWAYS.—MANDAMUS.

When the Court will grant a mandamus to compel the surveyor of highways to produce his accounts.

At a special sessions for the highways, held Oct. 29, 1828, Lewis Lewis was duly appointed surveyor of the highways for the hamlet of Penmain in the county of Monmouth, for the year ensuing, and he accepted the office; but instead of performing the duties thereof personally, he agreed with one Daniel Lewis, that he should perform the duties of the said office for him the said Lewis Lewis. This agreement was without the consent or approbation either of the inhabitants of the hamlet, or of the justices, and Daniel Lewis was not appointed assistant-surveyor. Daniel Lewis accordingly acted throughout the year for Lewis Lewis; and at a meeting held for the said hamlet on the 16th Oct. 1829, he produced certain accounts, as and for the accounts of Lewis Lewis; which accounts were passed by the inhabitants at the said meeting, but were never taken before one justice, pursuant to the statute, although on the 29th of the same month they were produced and verified on oath by Daniel Lewis, at a special sessions for the highways,

and then allowed ; which allowance was afterwards removed by *certiorari*, and quashed in the King's Bench. Lewis Lewis had never rendered or produced any account whatever. A large sum of money had been received by Daniel Lewis, over and above what had been expended on the highways, and no part of this sum had been paid over. In consequence of it being discovered that Daniel Lewis had fraudulently converted to his own use the said sum of money, he was indicted for embezzling the same, being charged as clerk or servant of Lewis Lewis ; and owing to divers delays, the indictment was not tried till the Michaelmas Sessions, 1832, when he was acquitted, the Sessions holding the offence did not amount to felony, within 7 & 8 G. 4. c. 29. The application would have been made earlier, but for the pendency of the said indictment. Lewis Lewis now refused to produce and pass his accounts, on the ground that the time for so doing was passed.

Greaves moved, on affidavit of these facts, for a rule *nisi* for a *mandamus* to compel Lewis Lewis to produce and pass his accounts ; which was granted by *Parke, J.*, and was afterwards made absolute, no cause being shewn.

Rex v. Lewis Lewis, Nov. 26, 1832.

COSTS OF MANDAMUS.

Where persons successfully opposing a rule for a mandamus are not entitled to their costs.

Greaves moved for an attachment against the overseers of the poor of the township of Stanton in the county of Stafford, on the following facts : A rule *nisi* for a *mandamus* had been granted last Easter term, calling on the justices of the peace of Staffordshire to shew cause why a *mandamus* should not issue to rehear an appeal, upon notice to be given to them, and also to the churchwardens and overseers of the parish of Mayfield. Upon shewing cause against this rule, it was discharged generally, "with costs." The justices did not appear by counsel to oppose the rule, but the churchwardens and overseers of Mayfield did. The rule was drawn up, "with costs to be paid to the said defendants, the justices, or their attorney." It appeared by the affidavit of the attorney for the churchwardens and overseers of Mayfield, that the overseers of Stanton had been duly served with the rule, and had refused to pay the costs which were allowed by the Master of the Crown Office.

Whitcombe objected, that the overseers of Stanton were not bound to pay the costs of any but the justices.

Greaves urged, that the present rule was drawn up according to the general practice, where rules *nisi* for *mandamus* had been discharged under similar circumstances. He mentioned *Rex v. Justices of Monmouthshire*, 1 B. & Ad. 895, where this had been done. He contended, that the justices were merely trustees for the parties actually interested. The present case was like the case of a *certiorari* to remove an order, where the parish

officers opposed the rule, and it had never been doubted that such officers were entitled to their costs, where the rule was discharged generally with costs.

Littledale, J. held that the parish officers were not entitled to their costs under this rule, and therefore refused the attachment ; and he mentioned a case which had occurred yesterday, where the rule *nisi* for a *mandamus* had been discharged, with costs to be paid to the justices, but without costs to the parish officers.

Attachment refused.—*Rex v. The Justices of Staffordshire*, Nov. 21, 1832. K. B. P. C.

COSTS OF THE DAY FOR NOT PROCEEDING TO TRIAL.

If a plaintiff does not proceed to trial pursuant to notice, he must submit to all extra costs consequent on his neglect.

On a motion that the Master might review his taxation of costs of the day for not proceeding to trial, in the present cause, it appeared that he had allowed a fee of twenty guineas to a learned counsel, who had since become a Judge : whereas it was contended, that he ought only to have allowed a refresher, as the plaintiff would be obliged to pay the full amount of that fee to some other learned counsel, on taking his cause down to trial.

Cur. adv. vult.

Patteson, J.—In this case, an application was made to review the Master's taxation, on the ground that he had allowed a fee of twenty guineas to the present Chief Justice, in taxing the costs of the day for not proceeding to trial ; for it is contended that he ought only to have allowed a refresher. By his not doing so, it is said, the plaintiff is under the necessity of paying two fees instead of one. But if he is obliged to do so, whose fault is it? The plaintiff's fault, as he should have tried his cause at a proper time. If he does not try his cause when he ought, he must take his chance of casualties.

Rule refused.—*Hardy v. Foss*, Nov. 24, 1832. K. B. P. C.

SERVICE OF RULE.

Service of rule at a place where letters and parcels were directed to be left, is not sufficient.

On moving to make a rule absolute for referring it to the Master to compute principal and interest on a bill of exchange, it appeared that the rule had been served in the following manner. The defendant was away from his chambers ; but a board was stuck up at the door, directing letters and parcels to be left at the hair-dresser's. The rule had been left there ; and the hair-dresser said that he was in the habit of receiving letters and parcels for the defendant.

Littledale, J.—That will not do. The service is not sufficient.

Rule discharged.—*Stout v. Smith*, Nov. 17, 1832. K. B. P. C.

NOTES OF THE WEEK.

House of Commons.

SUITORS' FUND.

WE observe a new return has been ordered, on the motion of Mr. Hume, of the amount of the Suitors' Fund, the dividends, &c.; and the payments thereout for salaries, buildings, &c.

We trust this return will enable the Honorable Members for Middlesex and Truro to shew the practicability of paying the expense of building a Judges' Hall and Chambers, and that Parliament will also concur in uniting the object of a Public Record Office. We refer to another part of the present number for a report of the presentation, by Mr. Tooke, of the Petition of the Incorporated Law Society, regarding the Judges' Chambers; and doubtless the Petition will not be suffered long to "lie on the table," but a Committee will be appointed to consider and report on the subject.

HIGHWAYS.

A Bill to consolidate and amend the Laws relating to Highways in England, has been read a first time, and ordered to be read a second time on the 11th of March.

LUNATIC COMMISSIONS.

This Bill has been brought into the House of Commons, and printed. We understand that there are several objections to the measure, founded on the practical inconveniences which it is apprehended will arise in carrying it into effect. One of these is the delay in trying issues in the country before a Judge of Assize, instead of sending them to local Barristers and Solicitors. Under the present system a commission may be executed in the place where the unfortunate party and the witnesses reside; but under the new Bill they must suffer the inconvenience and expense of proceeding to the assize town.

REGISTRATION OF VOTES.

Mr. Tooke has given notice of motion for a Bill to alter and amend the Reform Act in the following particulars:—1. As to compulsory payment on the registration of

votes for counties; 2. For better defining the computation of distance, for constituting residence within a borough; 3. To preserve the elective franchise in certain cases of change of residence within a borough; 4. For enabling electors, declaring themselves neutral, so to be recorded on the Poll Book.

LAW OF PATENTS.

This Bill has been read a first time, and ordered for second reading on Wednesday next, and to be printed.

SUFFOLK ASSIZES.

The second reading of this Bill has been deferred till Wednesday next.

PRIVATE BUSINESS AND PETITIONS.

The House now meet every day, except Saturday, or such day as may be appointed for Election Petitions, at twelve at noon, for Private Business and Petitions, and continue till three o'clock, unless the business be sooner disposed of.

Twenty Members are sufficient to form a House for this purpose.

The Speaker will take the chair at five o'clock, if there be *forty* Members present; and if a less number, he will adjourn the House till twelve the next day.

ANSWERS TO QUERIES.

Common Law.

HUSBAND AND WIFE. P. 228.

Whether the wife, as survivor, can enforce a contract entered into by her deceased husband, for the sale of her lands, is a question, which, however reasonable it should seem to answer in the affirmative, has never yet, I believe, been so directly before them, as to receive the express sanction of the Courts. Your correspondent P., however, will find, that the point arose collaterally in *Humphreys v. Hollis*, Jac. Rep. 73. This was a bill filed by a purchaser, to have an agreement entered into by him for the purchase of an estate, delivered up to be cancelled, on the ground of fraud. It did not appear that the vendor's wife was a party to the contract; but the answer of the defendant showed he was seised in right of his wife of a share of the estate. Before trial, the

defendant died; and on the question whether, under the circumstances, it was regular to revive against his personal representative, without making his wife a party to the suit, (an objection having been taken on that ground) Sir *Thomas Plumer*, M. R., after stating, that by the general rule she was not a necessary party, not being a party to the contract, continues, "It is clear the wife could not be affected by the contract; but it is argued, that she might adopt it, and claim to have it performed; to which the answer is, *she has not attempted so to do; and it is therefore not necessary to decide whether she could or not.* If she were made a party she might disclaim, and the bill must then be dismissed as against her, with costs. *It is enough to say, she has taken no steps to affirm the contract.* I am clearly of opinion that the objection is not good." On the whole, then, it is very probable that the wife may in such cases either affirm or annul the contract: but this, like many other questions which the Courts are apt to say "are not necessary to decide," cannot certainly be regarded as finally settled; and I am consequently somewhat surprised at the decisive opinion expressed by P. Q., p. 291, *ante*.

MANCUNIENSIS.

Estate of Property and Conveyancing.

DEVISE.—HEREDITAMENT. P. 328.

In answer to the query of your correspondent, "A Legatee," I beg to cite the following authorities: *Moore v. Denn*, 2 Bos. & Pull. 251; *Hopewell v. Ackland*, 1 Salk. 239; and *Canning v. Canning*, Mosely, 242. The result of which decisions was, that a fee would not pass merely by the use of the word "hereditament."

CENSOR.

FEME COVERT. P. 323.

The query of your correspondent "Lector," was decided by Lord *Kenyon* in the following words:—"The will being made subsequent to the articles, though before the marriage, I am of opinion that it was not annulled by the articles, but that it will operate as an effectual disposition under those articles."

C. W.

CHOSE IN ACTION.—ASSIGNMENT. P. 308.

Purdeu v. Jackson, 1 Russ. 1; and *Honner v. Morton*, 3 Russ. 65; *Donne v. Hart*, at the Rolls, Michaelmas Term, 1831, determined that a wife's reversionary contingent interest in leasehold, would pass, so as to defeat her right by survivorship. His Honor distinctly stated, that the same rule prevailed whether the interest was legal or equitable.

C. S.

DEVISE—FREEHOLD. P. 147, 162, 211, 306.

In addition to the authorities mentioned before, it was determined, in *Roe v. Patteson*, 16 East, 221, that "a devise of all the remainder in the stocks before bequeathed, with my free-

hold property, to A.," passes a fee. In *Patten v. Randall*, 1 J. & W. 189, in which the fee was held to pass, the Master of the Rolls said, "the term *property* must comprehend all his real and personal estate;" and in *Thomas v. Phelps*, 4 Russ. 388, he also said, "a gift of all property, will not only pass real estate, but will pass all the interest of the testator in that estate; and *Nicholls v. Butcher*, 18 Ves. 193, was decided by Sir *W. Grant*, on the ground that a man cannot be said to give all his property, unless all his interest in it passes; and that, in many cases, the Judges have explained the meaning of the word "estate," by saying that it imports the absolute property.

C. S.

QUERIES.

Estate of Property and Conveyancing.

HEIR.—TAIL-MALE.

A., being seised of lands in tail-male, died intestate, without having any lineal or collateral heir, or descendant;—to whom will the estate revert? Will the heir male of the original donor, if he can be discovered, be considered as the heir at law?

C. D.

SPECIFIC PERFORMANCE.—SECOND CONTRACT.

A. contracts with B. for the purchase of certain freehold estates. B., notwithstanding the agreement, sells to C., who buys without notice of the former contract, and for valuable consideration. A. institutes a bill in equity to compel a specific performance of his agreement with B., when the subsequent sale is made the answer to the bill. What redress can A. obtain?

H. C. T.

Estate of Landlord and Tenant.

RENT.—TAXES.

A. is tenant to B., and is a quarter's rent in arrear; B. distrains upon A.'s goods for such rent. Previous, however, to the sale of the distress, a claim is made by the commissioners of King's taxes, for a quarter's taxes. The goods not being sufficient to satisfy both claims, perhaps some of your correspondents will state (citing authorities) which of them is to have priority.

P.

NOTICE TO QUIT.

A. agrees to execute to B. a lease, to hold to B. from the date of the agreement for one year, under the yearly rent, payable quarterly; and so on from year to year, until B. shall give three months notice in writing, to determine the agreement. Must the notice expire at the period of the year when the tenancy commenced? See 2 Camp. 78. Or has there not been a later case decided?

A STUDENT.

MISCELLANEA.

A GRAND LEGAL DIVERTISSEMENT, FOUNDED ON FACTS, CALLED "THE CASUAL EJECTOR; OR, THE OUSTER OUSTED."

Principal Characters by

		MEN.
William Davis, Lessor of the Plaintiff	-	Mr. Gentili.
John Doe, nominal Plaintiff	-	Mr. Didelot.
Richard Roe, the casual Ejector	-	Mr. Laborie.

		WOMEN.
Lydia Stroud, the real Ejector	-	Madame Hilligsburg.
Pl et Armis	-	Mesdms. Laborie and Rose.
Justice	-	Madame T. Hilligsburg.

Children, Judges, Attorneys, &c.

THE first scene represents a plot of ground with the appurtenances, situate, lying, and being at Hatfield, in the county of Hertford; the lessor of the plaintiff is discovered on a three legged stool, peeling potatoes; he is interrupted by the entry of Lydia Stroud, *vi et armis*, who, regardless of her sex, thrust him out from the premises, and shut the garden-gate against him; he wanders for some time in the deepest affliction, until he sees his old friend John Doe filing declarations in a haystack, who listens with attention to his sad story, protests against such unheard-of cruelty, declares that he himself is injured by the trespass on his friend's premises, and in the most condescending manner offers to take upon himself the trouble of avenging his cause, and insists on becoming the principal in the business. In the warmth of his zeal, he perceives a stranger lurking at the foot of a hill, whom he instantly accuses of having committed the trespass; in vain he asserts that he is perfectly ignorant of the transaction, that his name is Roe, and that, like him, he has for some time followed the innocent occupation of a pledge to prosecute; they are at the point of falling to loggerheads, when Justice interferes, richly habited in a parchment petticoat covered with precedents, in the middle of which is exhibited a medallion, with these words written in red ink:—"In fictione juris consistit Equitas."—At the sight of which the disputants immediately shake hands, Richard Roe consents to be called a casual ejector, and confesses himself guilty of all the trespasses laid to his charge. They dance a *pas de deux*, Justice beating time with her foot. No sooner does Justice retire, than Richard repents of the character he has assumed, and dreads the consequential evil which may befall him; he beckons to some attorneys, and before them, in the most solemn manner, disclaims being a party in the business, and intreats them to find out the real trespasser, and to acquaint her, in a polite letter, of his determination. The attorneys having taken down his protest in short-hand, he takes to his heels across the stage.

The last scene represents the aforesaid plot of ground with the appurtenances, situate, lying, and being in Hatfield aforesaid. Lydia is discovered at the window of the cottage, in tears, reading the notice she has received to defend. Her agitation increases at the sight of twelve judges slowly descending in a cloud,

to soft music; on shaking their wigs she disappears, and the sheriff, with his officers and *posse comitatus*, make their appearance; the latter enters the mansion, and returns, leading out the real ejector (here follows the minuet *de la cour*, by the sheriff and defendant, with a *gavot*), after which she curtsies to the judges and retires; and the sheriff delivers the key of the house to the rightful owner, whilst children, with *mesne profits*, march before them.

The piece concludes with a grand dance by all the characters, except the judges.

THE EDITOR'S LETTER BOX.

In reply to "An Inquirer," we rejoice to say that *Lectures* on the different branches of the Law are intended to be commenced in the *Incorporated Law Society*. We understand that the names of several Gentlemen of the Bar, eligible as Lecturers, have been received, but that no election has taken place. We recommend our correspondent to apply to the Secretary of the Society for further information. We expect soon to be enabled to furnish our readers with the plan and terms of the intended Lectures.

We have received the able communication of G. B. on General Registry. We have already an article on the subject in type, which will appear in our next; but we shall find room for G. B. in a subsequent number.

We wish to know the details of E. W.'s plan, and his mode of carrying it into execution, in order to bring the subject fully before our readers. A mere hint is useless.

The attention of our correspondents is invited to the Query on "Personal Property—Descent," p. 36.

We had no wish to restrain the discussion of the question proposed by "Justitia;" but he must take the trouble to analyze the *pros* and *cons*, before we can properly allow him to occupy our columns.

We beg to suggest to "Aspiro," the reconsideration of his proposed *modified* repeal of the Certificate Duty,—for his plan would be a most objectionable income tax. The present impost is a less evil than the inquisitorial examination which would inevitably follow the alteration suggested.

A Correspondent will observe that the decision in *Archdale's Case* is stated in p. 332, namely, "that as he *had* not nor *could* take the oaths, a new writ was ordered."

"The Owls, the Bats, and the Sun," do not exactly suit us. We are obliged to our correspondent for his continued advice. He will recollect, however, that our pages are designed for novices as well as the initiated, and the space devoted to the articles in question is not considerable.

"A Subscriber" is referred to 33 Geo. 3, c. 28, § 14, and 35 Geo. 3, c. 14, § 6, as to the attestation of wills, bequeathing money in the funds.

The Legal Observer.

Vol. V.

SATURDAY, MARCH 9, 1833.

No. CXXIX.

———"Quod magis ad Nos
Pertinet, et nescire malum est, agitamus."

HORAT.

A FEW WORDS MORE ON THE GENERAL REGISTRY QUESTION.

As the important subject of a General Registry is once more coming before Parliament, it seems proper that we should again enforce the opinion which we have before endeavoured to establish respecting it; which we shall do without further preface. The first great practical question respecting the measure, is, what benefit it will confer on the present owners of property throughout this country? Because it is evident that as their interest is immediate, undoubted, and exclusive, they have the best right to be attended to and protected in the matter. The only answer to this must be, that it can confer *no benefit whatever* on these persons, as the proposed bill is not to apply to them or their deeds, the new registry being confined to all future instruments of title, and not intended to affect any such instruments now in existence.

The next question is, if a registry can in no way benefit the present owners of property, can it in any way *injure* them? Now it is alleged by the opponents of a registry, that all future deeds, which will come within the intended registry, must, more or less, refer to the prior title, and must disclose, more or less, as well the prior title as the incumbrances and charges on the property; and if we grant that this need not be the case in all transactions, we must admit, that either by design, by carelessness, or by ignorance, it may occur in some, and that to that extent the present owners of pro-

perty may be injured and inconvenienced. It seems certain, therefore, that persons at present possessed of property may be injured by the new measure, and cannot be benefited; that the advantages of the measure are to be enjoyed entirely by the future holders of property; that the present holders of property are, for the benefit of future holders, to give up a portion of their present security; and that, without any equivalent whatever, they are to run the risk of invalidating their own titles, whether acquired by descent or purchase.

This being the plain state of the case, it is clear that it must be proved that the disadvantages of the new measure are trifling, the reasons for it unquestionable, and that the evils of the existing system will admit of no other remedy than a General Registry, before the legislature can ask the present holders of property to assent to the measure. Let us then consider these points.

It can hardly be denied that, even to future holders of property, the scheme of a registry is open to great objections. In the first place, at a time when other measures are being introduced for stripping conveyances of many usual forms and ceremonies, this bill will render a new ceremony necessary, without which all assurances will be utterly invalid, and of no effect whatever. At a time when it is endeavoured to lessen the expense of deeds and other documents, a General Registry will impose a heavy burden on all alienations and charges of real property. And it is to be remembered, that so much did this last objection weigh

with the Special Committee appointed by the House of Commons to report on the subject, that although, in favor of some plan of this nature, they came to the conclusion, that for transfers of small estates, which they necessarily admit are more numerous than any others, the benefits of a General Registry will not compensate for the disadvantages attending it ^a.

We have so repeatedly pointed out the practical evils of the disclosure which a General Registry will introduce, that we shall not further dwell on them, except to remark, that the clauses in the Registry Bill for remedying them must be ineffectual. It provides (§ 77), that before an inspection of any instrument is allowed, the person applying for the same shall sign a declaration that such inspection is required in respect of lands in which he has, or *claims some* beneficial estate; or in which he has contracted to purchase some beneficial estate or interest; or that he is a barrister, solicitor, &c., employed by some other person, to be named and described, or the authorised clerk of a barrister, solicitor, &c., and that such inspection is required on behalf of a person having a beneficial interest; and if any person shall, in any such declaration, wilfully state any thing which shall be untrue, such person shall forfeit the sum of

l., with costs, to be recovered by the Registrar-General. Now it appears to us, that the check here imposed on the inspection of the registry, will not have any real operation in practice. It may, together with the fee payable, restrain mere idle curiosity; but in its very terms it cannot prevent the search of any person having any interest, or claiming any interest in the land; and it is to such person that the mischiefs of the disclosure will apply. Almost all persons may be brought within expressions so loose; and we conceive that the proviso will have no effect in preventing the unnecessary and improper exposure of the liabilities and private concerns of individuals. It may possibly influence, to a certain extent, honorable men, who would make no improper use of the information thus obtained; but it will have no effect in checking the inquiries of those who may use the knowledge they gain to the injury and ruin of others.

These, then, appear to us some of the disadvantages of the plan for a General Registry, now about to be introduced into the House of Commons by Mr. W. Broug-

ham; and with these difficulties to encounter, we have to ask, what are the overbalancing advantages which it offers? Its warmest advocates generally reduce these to two. *First*, the doing away with the present system of taking assignments of outstanding terms as a protection against incumbrances; and *secondly*, the prevention of risk from concealed deeds. The other alleged defects of the present system may be resolved into these, or admit of remedies much less sweeping and doubtful than a General Registry ^b.

With respect to the first advantage of a Registry, we admit that the plan of assignments of terms to attend the inheritance, is not without its difficulties. But we must recollect that these in a great degree arose from the decisions of the Court of King's Bench, as to presuming their surrender; but as the old and safe rules on the subject are now restored ^c, the objection to this mode of protecting a purchaser or mortgagee are more fanciful than real. Indeed we have little doubt that, if the learned Commissioners had turned their attention to the improvement of the existing system of assigning terms, and if they had recommended the alteration of the present law of equitable notice, they would have rendered a much greater service to the profession than by introducing a measure, which, if carried into effect, will unsettle the whole of our laws relating to property.

But it is the second advantage of a General Registry, which is chiefly insisted on by those who favour the scheme, *vis.* the prevention of all risk from secret or lost deeds. And we will at once grant that it would have this effect; but then we are to enquire how often the evil of suppressed or lost deeds is found to exist; and to arrive at a conclusion on this point, we will look into the last body of evidence given on this subject—that given before the Select Committee of the House of Commons.

Mr. Preston, on being asked whether titles are not frequently unmarketable by the loss of deeds, replies, "not frequently; the instances are so few, not one in a thousand, that they are hardly worth notice;" Report, 217, 272.

^b See Mr. R. G. Hall's pamphlet, p. 3, lately reviewed by us (*ante*, p. 294), of some parts of which we have availed ourselves in the present article.

^c See *Doe d. Blacknell v. Plowman*, 2 B. & Ad. 573; *Day v. Williams*, 2 C. & J. 460.

^a See the Report, 2 Monthly Record, 421.

Mr. Beale, a solicitor from Kent, states the result of the experience of thirty-five gentlemen of that county, the aggregate of whose practice is 661 years, that they were aware of *eight* instances only of titles rendered unmarketable by the loss of deeds; p. 326—7.

Mr. Nicholetts, a solicitor from Somerset, states, that he has spoken at least to sixty professional gentlemen on the subject of the suppression of deeds by fraud or neglect; all of whom were able to state only about *three* instances. In twenty-five years practice, that gentleman himself does not recollect *one* deed lost.

Mr. Wright, of Sunderland, has conversed with solicitors of forty or fifty years practice, who declare that they have never heard of such a thing as fraudulent suppression of deeds; p. 168.

Mr. Coote says, that the actual cases which have occurred, of injury (from suppression of deeds) are very few in proportion to the prodigious number of daily transactions; p. 183.

Mr. Bickersteth, an advocate for the bill, says, that to his knowledge the relative number of cases (of suppressed deeds) is not very great; but that individual cases often occur; p. 198.

Mr. Pyne, a provincial barrister and conveyancer of twenty-three years practice, says, "suppressed deeds do not occur in one case in a thousand;" p. 233.

Mr. B. Thomas, of Chesterfield, after a practice of forty-seven years, says, from his own experience and that of able practitioners, that he has never known one instance of a suppression of deeds, whereof one sixpenny worth of loss has been sustained by any one.

Mr. Giles Miller, a solicitor of Kent, says, that suppression of deeds is very unusual; p. 249.

Mr. Barnes, of Exeter, in twenty-nine years practice, has known but two instances of suppressed deeds in his own practice, although it may have occurred in that of others.

Mr. Brockett, of Newcastle-upon-Tyne, of nineteen years practice, does not recollect a single instance of eviction by reason of a concealed deed; and states the same result of the experience of an eminent barrister of Newcastle, of fifty years practice, who has passed as many titles through his hands as most conveyancers; p. 284.

Mr. W. C. Walter, barrister and conveyancer, of Newcastle, states, that after extensive enquiries amongst those who must have heard of such cases, if they had occurred, the experience of some of whom extends over half a century, he has been able to get information of very few instances of loss, either by fraud or mistake; p. 301.

Mr. J. H. Shaw, of Leeds, says, "that there are very few instances of deeds being lost;" p. 317.

Mr. Alexander Baring, an advocate for registry, cannot state any case of positive loss; but can state a case or two of inconvenience; p. 334.

Mr. Spence, an advocate of registry, was able to mention only two instances of suppressed deeds; p. 312.

On the other side, Mr. Senior, Mr. Adlington, and Mr. Fisher, consider that the loss of deeds is a matter of constant occurrence.

It will be seen, therefore, that according to the chief body of evidence, the great reasons^d for the introduction of a General Registry,—the danger and inconvenience arising from the loss or suppression of deeds,—exist in so trifling a degree, that if the measure were passed on this account, we should clearly be legislating for the exception, and not for the general rule. We humbly conceive, then, that if these are the great reasons for the introduction of a General Registry, they are completely overbalanced by the many evils and inconveniences which must be inseparable from its establishment.

We venture, therefore, to hope, that the legislature will pause before it passes a bill, which is so entirely alien to the feelings of so large a proportion of the profession and the public as this; that it will not listen to mere fanciful evils, unsupported by facts, and generally brought forward by persons of no practical information; and that it will pause before it introduces a measure which must unsettle all previous rules respecting titles; the effect of which even its most sanguine advocates cannot foretel, and which, in the opinion of many entitled to give an opinion, will be infinitely worse in its consequences than the inconveniences to which the present system is exposed.

^d The Solicitor-General (Sir J. Campbell), in his evidence before the Committee, states, that "the prime and chief object of the Register is, to guard against the suppression of deeds;" p. 15.

LORD WYNFORD'S COMMON LAW COURTS BILL.

A FULL Analysis of Lord Wynford's Bill, "for Preventing the Expense and Delay of Suits in the Common Law Courts," was given in our first volume; p. 113. The new Bill which is now in progress in the House of Lords is nearly to the same effect, and we subjoin an outline of its provisions.

1. A particular of the demand is to be delivered with the writ.

2. The *parties* may be examined on interrogatories for the discovery of the facts or documents in dispute.

3. Either party may be held to bail; the plaintiff to secure the defendant's costs; the defendant to secure the debt and 100% costs.

4. In case the matter be reduced by the examination to a question of law, the Court may decide without a trial.

5. The Judges may allow time for the payment of the debt, not exceeding three months.

Several clauses in the former Bill, which provided for the production of documentary evidence, under the penalty, if refused, of subjecting the party to the costs of the proof whatever might be the result of the suit, appear to be omitted in the present Bill.

With every respect for the learned Lord, we cannot concur in thinking that this plan will prevent or diminish either delay or expense in actions at law. The interrogatories, in many cases, will be settled by counsel. Objections may be taken to the interrogatories, and these objections must be argued by counsel. But supposing there is no objection to the form or nature of the questions, the examination must be attended (for justice cannot otherwise be done satisfactorily) by counsel or attorneys. The expense of all this, added to the necessary charges of the examiner and office copies of the depositions, will outweigh any advantage gained by altering the present course of proceeding.

NEW BILLS IN PARLIAMENT.

ANALYSIS OF "A BILL TO EXPLAIN AND AMEND THE LAWS RESPECTING LETTERS PATENT FOR INVENTIONS."

THE Bill recites, that it is expedient the Laws respecting Letters Patent should be explained

and amended; and it proposes to enact as follows:

That, notwithstanding any law or custom to the contrary, His Majesty is hereby empowered to grant letters patent for the terms of *seven* years or *fourteen* years, as is hereafter expressed and enacted, for the sole working or making of any manner of new manufacture within the realm of England, to the inventor or inventors of such manufactures, which others at the time of making such letters patent shall not publicly use in England, so as they be not mischievous to the state, provided the said person shall particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be inrolled in the High Court of Chancery within a limited time next after the date of the said letters patent.

And reciting, that doubts have arisen respecting the persons to whom letters patent ought to be granted, and letters patent have been confined to the discoverer of a new thing, or the first publisher thereof, or to the introducer of an invention from realms abroad; Be it further enacted, that in addition to the above classes of persons, letters patent may be granted to any person in Great Britain and Ireland who may have received from any person being abroad, or from any person being resident within the kingdom, information of any new manufacture whatever, so that he may have the said letters patent in his own name.

That any person in Great Britain and Ireland may communicate or sell any invention that he may possess, unto any person whatever, who may and shall be at liberty to obtain letters patent in his own name, provided the said letters patent shall contain a recital that the said invention hath been communicated or sold to the person in whose name the said letters patent are granted.

And reciting, that doubts have arisen respecting the new manufactures or subjects for which patents ought lawfully to be granted: And that doubts have also arisen as to the extent of the use of a manufacture, which may prevent its being the lawful subject of letters patent: And that it is impossible to enumerate every kind of manufacture which ought to be protected by letters patent; Be it further enacted, that all new substances or things made; that all new machines; that all new combinations or arrangements of machinery or things, either already known or newly discovered; that all principles newly discovered, and all new applications, which, when reduced into practice, produce some article fit for sale; that all chemical discoveries, methods or process, which result in or produce an article of commerce, shall be the subjects for which letters patent shall be granted, whether they be discovered within the United Kingdom of Great Britain and Ireland or be obtained by communication or sale as aforesaid.

That the letters patent shall not become void, although the manufacture may have been used in any particular part of the United King-

dom of Great Britain and Ireland for which the letters patent may have been granted, either privately or in an imperfect manner, or has not been practically used in a public manner within the last *ten* years, prior to the date of the said letters patent.

And reciting, that there is often great difficulty in giving a full description of an invention, by which it can be readily performed or made either by a written account or drawings thereof; Be it further enacted, that it shall be lawful for the patentee, in addition to his written description, to deposit a model or pattern of his invention in some public building, to be named by the Attorney-General in his Report or Bill, and that the said model or pattern may be produced or given in evidence by any person whatever in any Court of Law or Equity.

And reciting, that it often happens that omissions are accidentally or unintentionally made in the specification of an invention: And that it often happens that the patentee discovers some improvement upon the subject for which the letters patent have been granted, and he is deterred by the great expense thereof from taking out new letters patent for the said improvement, which is often lost to the public; Be it enacted, that it shall be lawful for the said patentee to make and enrol a specification or specifications supplying those omissions or including those improvements.

That such second or third specification shall bear a stamp duty of *pounds*: Provided always, that such secondary specification be made before any suit at law or equity be depending, either to cancel or uphold the said letters patent.

That if the patent and specification be bad in law as to part thereof, they shall not be bad in law as to the remainder thereof respectively, and that the said inventor shall be bound and is hereby required, upon the decision of any Court of Law or Equity that the same is bad in law in part, to enrol another specification thereof, which shall be written on a piece of parchment bearing a stamp of *pounds*.

And reciting, that many letters patent have been declared to be void, and great expense and loss of labour have arisen from the strict rules by which the name or title of the invention in the letters patent, and the description of the invention in the instrument called the Specification, have been construed; Be it enacted, that the Court or Judge before whom any proceedings at law or equity may be taken upon any letters patent, shall have power and are hereby authorized to amend the title or specification in all matters of form or description which could not have misled any persons acquainted with the subject thereof.

And reciting, that the present mode of obtaining letters patent is most irksome and injurious to inventors: And that the Sign Manual of His Majesty may be without detriment to the public service dispensed with, as to the Warrant and Bill of Letters Patent in England; Be it further enacted, that letters patent for inventions may be granted for England, under the Great Seal, in the manner fol-

lowing (that is to say); that the said inventor or inventors may be permitted to present a petition addressed to His Most Gracious Majesty, setting forth and declaring that he is the first or true inventor of some new invention, naming it, and also declaring whether it be his intention or not to take out letters patent either in Scotland or Ireland; but that he shall not be required or called upon to make an oath in support of the said petition.

That the said inventor shall make a short description of his invention, to be called a "Preparatory Specification," which shall contain an outline or sketch of his said invention; and that he shall deliver the said preparatory specification, sealed up with the said petition, at the office of the Secretary of State for the Home Department, and thereupon paying the fees hereinafter required.

That the said petition and the said preparatory specification, so sealed up as aforesaid, shall be referred by the said Secretary of State to His Majesty's Attorney or Solicitor-General, who shall report thereupon and make out a Bill, as heretofore, for the purpose of the said Bill being carried to the office of Patents, for the purpose of letters patent being made out and receiving the Great Seal of England: Provided always, that it shall not be necessary to take the Bill to the offices of the Signet, Privy Seal, or Hanaper.

That the Lord High Chancellor, or the Keeper of the Great Seal, may and is hereby required to affix the Great Seal to letters patent for inventions, upon the authority of the said Bill and Report of His Majesty's Attorney or Solicitor-General; and that the letters patent shall bear date from the day of presenting the petition at the office of the Secretary of State for the Home Department, or the day of the date of the Report of the Attorney or Solicitor-General, if he may so report.

And reciting, that great abuses have sprung up from the manner in which persons enter *caveats* in the Court of Chancery and at the offices of the Attorney or Solicitor-General, and many inventors have been injured by the secret of their inventions transpiring before the letters patent were sealed; Be it enacted, that *caveats* shall not be entered at those offices, except at the office of the Attorney-General, during the *fifteen* days from the day of the title to a patent appearing in the Gazette; and each person or party entering a *caveat* shall, at the time of entering the same, lodge in the office of the Attorney-General an outline or description of his own invention, which he imagines or thinks is about to be made the subject of letters patent to be granted to another person, to be called "The Preparatory Specification."

And reciting, that it is necessary for the detection of frauds and the prevention of improper letters patent, and also for the determination of the priority to be given to letters patent, that His Majesty's Attorney or Solicitor-General should have the assistance of men practically versed in arts and sciences; Be it further enacted, that if any *caveat* be entered

or objection raised to the grant of any letters patent within *fifteen* days from the publication in the Gazette as aforesaid, then the Attorney or Solicitor-General shall require the parties objecting to lay a statement, in writing, of their objections before him the Attorney or Solicitor-General, who may thereupon call to his assistance any two men practically skilled in the arts and sciences, to assist him in coming to a determination whether such letters patent ought to be granted, or to whom they should be granted.

[To be continued.]

PRACTICAL POINTS OF GENERAL INTEREST.

No. XLII.

STAGE COACHES.

A CONTRACT to convey passengers by a stage coach attaches upon payment of the fare; *Ker v. Mountain*, 1 Esp. 27; and the engagement must be performed in the terms on which it was agreed for. Thus if two persons take inside places in a coach, saying they wish to travel together, they must not be separated. *Per Abbott*, C. J., 1 C. & P. 610. And it seems pretty clear that a stage coach proprietor cannot, upon the tender of the fare, refuse to accept an individual as passenger, provided he has room in his vehicle. *Bretherton v. Wood*, 3 B. & B. S. C. 6 B. Moo. 141, and 9 Pri. 408. The following case decides another point on this subject, that a stage coach proprietor must provide roadworthy vehicles.

It was an action of *assumpsit* against a coach proprietor and common carrier, for failing in his undertaking to convey the plaintiff safely from Chertsey to London. The axletree of the defendant's coach broke on the journey, whereby the plaintiff was thrown off, his limbs fractured, and considerable loss and expense incurred in his cure. It appeared that the axletree was an iron bar, which, excepting the arms projecting into the wheels, was enclosed in a frame of wood, consisting of four pieces bound together by clamps of iron. The clamps were fastened with screws. Before the journey, the defendant's servants had examined this part of the vehicle, in the usual way, when no defect was obvious to the sight; but upon investigation after the accident, a defect was discovered in that portion of the iron bar which, being imbedded in the woodwork, could only be examined by unscrewing the iron clamps, and taking off the wooden frame. A mail contractor proved that it is not usual, previous to journeys, to examine the iron of the axletree, by opening its wooden

frame; and that such a practice would be productive rather of insecurity than of safety. The maker of the defendant's coach swore that the whole vehicle had been made of the best materials; that the coach was not new; but that the iron of the axletrees was rendered more tough by use, and was less liable to accident after wear, than at first starting. Whereupon it was contended, that there had been no want of due care on the defendant's part; and that the plaintiff's calamity was the result of inevitable accident, for which the defendant was not responsible. *Tindal*, C. J. directed the jury to consider whether there had been, on the part of the defendant, that degree of vigilance which was required by his engagement to carry the plaintiff safely. The jury having found for the plaintiff, with 500*l.* damages—

Andrews, Serj. moved to set aside the verdict, on the ground that the defendant had conducted his business with all the caution that could be reasonably required; that the jury had been misdirected; and that the verdict was against evidence. A carrier of goods undertakes to deliver at all hazards; but a carrier of passengers is not responsible for accidents which happen in spite of every precaution. In *Christie v. Grigg*, 2 Camp. 79, it was held, that the proprietor of a stage coach was not answerable for any damage that might happen to a passenger from the coach being overturned by a mere accident.

Park, J.—I am of opinion that no rule ought to be granted. This was entirely a question of fact; and the damages are not excessive. It is clear that there *was* a defect in the axletree, and it was for the jury to say whether the accident was occasioned by what in law is called negligence, in the defendant, or not. The Chief Justice expresses no dissatisfaction at the verdict, and it ought not to be disturbed.

Gaselee, J.—I am of the same opinion. The burthen lay on the defendant, to shew there had been no defect in the construction of the coach. Whether there had been or not, was a question of fact, on which the jury have determined. In *Christie v. Grigg*, the accident was occasioned by a kennel which crossed the road, and not by any defect in the vehicle.

The other Judges concurred.

THE LAST RECOVERY.

To the Editor of the Legal Observer.

Sir,

You may remember that in a former number (Vol. II. p. 329) I gave you a specimen of "a new series of law reports, to be selected from the popular poetry of the ancients and moderns." The perverse blindness of the age has, however, given me no encouragement to pursue my plan, and I have therefore abandoned it for another.

which I have little doubt will be more attractive. If I cannot turn poems and plays into law, I flatter myself I shall be able to turn law into plays and poetry. You have very lately given us one sample of the effective manner in which this may be done (*antè*, p. 356), and I beg to send you another. It is a sketch of a new melo-drama, which I have "founded," not "on fact," but on a common recovery; and in allusion to their intended and immediate abolition, I call it "Double Voucher, or the Last of the Recoveries." The *dramatis personæ*, that is, the *actores fabulæ*, are as follow:

Actores Fabulæ.

(See 2 Bla. Com. 358, 362, and App. xvii.)

Tenant of the Freehold (afterwards *Recoveree*),
Mr. D. Edwards.

Demandant (afterwards *Recoveror*), Mr. F.
Golding.

Ejector (a leader of banditti), Mr. Hugh
Hunt.

Tenant in Tail (afterwards *Vouchee*), Mr.
John Barker.

Common Vouchee, Mr. J. Morland.

Præcipe, or *Disseisin en le Post*, Mr. Skin.

King, His present Most Gracious Majesty.

Sheriff (see the printed list).

Recompense in Value (a phantom), ———

Retainers of the Sheriff, Messrs. Doe, Roe,
Den, Fen, &c. &c.; with a *corps de ballet*
composed of the whole of the Court of
Common Pleas and Serjeants at Law.
(Being the last appearance of all the actors
in these parts.)

Act I. Scene 1.—The Demandant (F. Golding) is represented as having been lately in possession of a fair estate. Having derived his honours from a long ancestry, and waxing in years, he has grown careless in his state, and unmindful of the numerous bands of disseisors and ejectors with which this happy land is infested, and he has allowed himself to be turned out of possession by a notorious leader of these lawless men, the terror of the surrounding country, the celebrated Ejector (Hugh Hunt). Unaccustomed to meet calamities so extensive, he is at first overwhelmed with his misfortunes; but after a time he summons resolution, and resolves to apply to the Ejector, and endeavour, if possible, by fair means to obtain possession of his rights.—Scene 2. He repairs to his former happy mansion, and on examining it, he is surprised to find that the Ejector is no where to be seen; but a brass-plate on the door in-

forms him that "the Tenant in Possession" (D. Edwards) now occupies it. He knocks, and entreats the restoration of his paternal domains; he insists that the Tenant has no right there, but that he came into possession after the dreaded Ejector had turned the Demandant out of it. The mysterious Tenant, however, denies this entirely, and drives him with ignominy from the door. Fortunately, however, for the Demandant, he applies to the King, who is at hand; who, entering into his case, sends Præcipe (Skin) to the Sheriff of the County, and after greeting him, commands him without delay to restore the possession of the estate to the Demandant; and the first act concludes by a splendid procession and chorus of the retainers of this distinguished person, ably personified by Messrs. Doe and Roe, Den and Fen, &c.

Act II. Scene 1.—The scene now again shifts to the premises in question. The house is invested by the armed retainers of the Sheriff, led on by the gallant Præcipe. The affrighted Tenant sees at once that resistance is hopeless against so powerful a force. The justly enraged Demandant is now inclined to insist on even more than his former possessions; he boldly demands *two* messuages, *two* gardens, *three hundred* acres of land, *one hundred* acres of meadow, and *fifty* acres of wood, with the appurtenances. In vain does the Tenant call upon the Ejector for assistance; that notorious freebooter has long since departed to his strong hold. He next invokes the Tenant in Tail (Mr. J. Barker), and vouches him to warrant the lands, and he most unexpectedly assents to undertake the defence. The Tenant in Possession is then deluded by a phantom, called *Recompense in Value*, and retires. The Tenant in Tail, however, shews more boldness than wisdom. He enters into the warranty, and attempts to insist on his retaining possession. He soon however sees that this is hopeless, and he, in his turn, calls to his assistance the Common Vouchee (Mr. J. Morland), a soldier of fortune, who is ready to take up any side at a moment's notice. The phantom, *Recompence in Value*, again flits across the stage, and attempts to console the Tenant in Tail with her unsubstantial promises. The interest of the piece is now at its extreme point. The fight is for a short time vigorously contested; the *King's silver* is scattered about; the *Cursitors* make a fearful *charge*; and, for a time, the victory is doubtful. At last, however, the good cause prevails. The gallant Præcipe performs pro-

digies of valour, and, assisted by John Doe, beats down all opposition. The Common Vouchee sounds a *parley*, and finally makes default, and disappears for ever. The lands are then restored to the Demandant. The several parties form a striking tableau, which is *exemplified on a roll*; virtue is rewarded; justice is triumphant; and the piece concludes by the total annihilation of the estate tail and the remainders thereupon depending! †*†

REVIEW.

The Law of Fire and Life Insurance. By George Beaumont, Esq. Barrister at Law. J. and W. T. Clarke.

THE first part of this book treats, 1, Of the Property Insured; 2, Of the Form of the Policy; 3, Of the Duration of the Insurance; 4, Of the Interest of the Insured; 5, Of the Premium and Return of Premium; 6, Of the Risk, including Fire and Life Insurance; 7, Of Misrepresentation, Concealment, and Warranties; 8, Of Adjustment of Losses on Fire Insurance; And 9, On Assignment of Policies and Notice of the Assignment.

The second part relates, 1, to the effect of the Insurance on other Contracts. In this is included the liability of the policy to seizure under an execution. The effect of the forfeiture of the lease of the property insured, and the bankruptcy of the tenant, are also noticed in this part of the work. The rights of devisees, legatees, trustees, annuitants, and creditors, are next considered. 2, The Nature of Insurance Companies as Partnerships, their Rights and Liabilities at Law and in Equity, and the Authority of Agents, are then treated of.

The third part is devoted to Proceedings on Policies of Insurance, and the evidence in support of the claim.

The work is well arranged, and evinces great care in the statement of the authorities; and it has the merit of being very concise. The author is, we understand, the son of Mr. Barber Beaumont, and may be supposed, therefore, to possess advantages of extensive practical information, not usually enjoyed by a law writer. He observes, that one half of the insurance offices started in this country have broken up in consequence of the losses by clerks and agents, and law and other incidental expenses, being omitted in their calculations; and thus a result, mathematically true, proved delusive in practice.

A principal object of Mr. Beaumont appears to have been, to notice the opposition existing between the maxims of law and the usage of commerce, and to distinguish the cases in which the practice of commerce controls the law. According to Mr. Babbage, life insurance is an exception to the leading notion, that an insurance is a contract of *indemnity*, as distinguished from a *wager*. Mr. Babbage thinks (says our author) that marine insurance is distinguished by the circumstance of the claim of the insured depending on the right to *abandon*, and of such claim upon a *capture* being defeated by a *re-capture*; and that life insurance is distinctly void of any corresponding limitations of the claim. Mr. Beaumont observes, that—

“In the case of *Godsol v. Boldero*, the Court expressly went upon an analogy between the claim on *capture* and *re-capture*, and that of the case before them, namely, a claim on the ceasing of a life being defeated by the subsequent liquidation of the debt, in respect of which the persons insured were interested in that life. And their decision against the claim in *Godsol v. Boldero* was soon afterwards made the ground of a similar decision of two cases in marine insurance, upon a question of right to *abandon* as for a total loss. That insurance is an indemnity; and not a wager, Mr. Justice Buller is a distinct authority (*Mason v. Sainsbury*, 2 Marsh. Ins. 796, 3d edit). ‘The contract really is an indemnity, though from the literal construction it is a wager.’ Many enlightened judges have doubted the propriety of giving legal effect to wagers: it is remarkable, that the earliest case which legalizes a wager, marks less the justice of the Bench than the flattery of the times. It was on a wager, (made six months before the Restoration,) that Charles Stuart, then an exile, would in twelve months be King of England: the decision was made within the first year of the Restoration; (1 Lev. 33.) Whether life insurance shall be hereafter considered as a contract of indemnity, or a wager, will be to be determined on the expediency of giving further effect to wagers, and of removing the barrier between them and insurance. But as the law stands, insurance is a contract of indemnity.”

The work contains some remarks on the mode of valuing life policies, with a view to a return of premiums, and also on the adjustment of partial losses.

We conclude with the following extract, which displays the learning and history of the subject:

“Some writers have shown either a zeal to affix the stamp of antiquity to the contract of insurance, or to give to such ancient nations as were celebrated for their commercial eminence, the further credit of this very useful invention of insurance. That the Rhodians, who

were supreme in commerce ten centuries before the Christian Era, were the inventors of this contract, is the opinion of some writers; no traces of the fact appear in any fragments of their laws incorporated in the Roman codes; but, being without the complete body of the Rhodian law, the present age cannot give a negative to the opinion. Some passages are quoted from Livy, which Emèrignon thinks show the existence of this species of contract among the Romans; but as Millar ("on insurances") has observed, there is no mention of any premium being paid for the indemnity mentioned in these passages, which resolve themselves into a statement that a risk of transport of merchandize for the use of the Roman government, was, by that government, taken upon themselves, as a liberal government, in the cases mentioned, were bound to do. (Livy, lib. 23, c. 49. Ib. 25, c. 3.) Suetonius, in the Life of Tiberius Claudius (c. 18,) mentions that the Emperor offered '*certa lucra*,' to the corn merchants, and took the risk upon himself of transport of the cargoes. These bounties and indemnity as inducements to secure a supply of a necessary commodity in time of scarcity, are very natural. A passage from Cicero's Letters (lib. 2. 17.) is more applicable to a case of a bill of exchange than to insurance, the occasion spoken of being the payment of a sum of money by some expedient which should avoid the risk of transport of the cash. A passage in Ulpian, (Dig. l. 1, tit. 45,) may have a like solution. Grotius and Bynkenshoek are opposed to the notion of insurance being known by the Romans.

"Coming to the modern states of Europe: the Jews of France are supposed to be the inventors of the contract at a time when they were driven out of that country; but the purpose to be answered on the occasion would be met by bills of exchange, which they have the reputation of having introduced into practice at that time. Their purpose was to secure to them when out of that kingdom, where their effects were left, the value of those effects. The event here alluded to took place in 1182, A. D. That the Lombards were the earliest of European states in the use of insurance, is a fact, of which there exists a very high degree of probability. The policy of marine insurance, even of the present day, is an antique form of contract used by the Lombards, to which fact there is reference in the instrument itself; and so early as 1620, policies made at Antwerp are expressed to be made 'according to the custom of the Lombards, in Lombard-street, London.' (Malyne Lex Mercat. 105.) The Lombards came over to this country in the 13th century. Neither the laws of Whisby (in Gothland), of Barcelona, nor the Hanseatic code (which were made respectively in the 14th, 15th, and close of the 16th centuries), nor those of Oleron, promulgated by our Richard 1st, in the 12th century, nor the famed *Consolato del Mare* of the 14th century, nor the Amalfitan Code, which preceded the same, have any trace of the contract of insurance. All the authorities upon these points are collected in the 2d vol. of Magens on Insurance.

"For the improvement of the system of insurance law, Europe is under early obligations to the famous ordonnance of Louis XIV. (A. D. 1669,) and much is also due to the author of "*Le Guidon*," (re-published by Cleriàc, Rouen, 1670), and of Pothier, Emèrignon, Roccus, Casaregis, Cocennius, Bynkenshoek and Santerna. In this country the system was in a very unimproved state until the talent of Chief Justice *Mansfield* was exercised upon it. In the Reports before he presided in the Court of King's Bench, there are not sixty cases, as Justice *Park* observes, the oldest case being in 6 Rep. 476.

"Yet in the reign of Elizabeth a special Court of Commission of Insurance was established, composed of commercial men. This court appears to have neglected its duties, and its jurisdiction was also contracted by decisions of the Court of Westminster. In a case, 2 Siderf. 121, it was decided, that a decision of the Court of Insurance was no bar to an action in the same matter in the Common Law Courts; and in 1 Shower, 396, it had been decided, that the jurisdiction of the same Court of Insurance did not extend to actions by the insurers, but only to those by the insured. The great delays of this Court of Commission were complained of; but by the statute under which they had jurisdiction, they were compelled to act without fee or reward.

"The above details relate more especially to marine insurance. It was ruled that the Commission just mentioned had no jurisdiction in matters of life insurance. (*Bender v. Oyle*, Style, 166.) When Justice *Park* published his treatise, he remarked, 'But when insurance in general is spoken of by professional men, it is generally understood to signify marine insurance.' Mr. Babbage, in his recent work on Life Insurance, informs us, that at the first introduction of Life Insurance Associations the common rate was 5 per cent., and for middle-aged persons above that rate: that in 1762, the Equitable proceeded on tables calculated from bills of mortality of London, and after nineteen years on the Northampton tables, adding 15 per cent.; and after five years they used the latter table without the 15 per cent. The further mention of those authors, from Halley to Babbage, who have brought science to the aid of commerce in this particular, cannot find room here."

INCORPORATED LAW SOCIETY.

INTENDED LAW LECTURES, &c.

WE understand that it is intended immediately to institute Lectures on the different branches of the Law; namely, on the Principles and Practice of Conveyancing, on the Principles and Practice of Equity, and on the Common Law. The Members of the Society who choose to attend, it is expected, will have the right of admission; and their Articled

Clerks may attend, on payment of a small fee. The Members of the Profession who do not belong to the Corporate Body, and their Articled Clerks, will probably be required to pay the fees usually fixed at other Institutions for each Course of Lectures.

We are informed that the names of eight Gentlemen of the Bar have been recommended to the Committee of Management; and that after all the names intended to be proposed have been received, the Committee will proceed to the election and complete their arrangements. We shall be happy to communicate to our readers the earliest intelligence we may obtain of the progress of the arrangements, and to diffuse the knowledge of this Institution in furtherance of its meritorious and important objects, as stated in the words of its Charter,—namely, “the acquisition of legal knowledge, and better and more conveniently discharging professional duties.”

We learn also, that the Committee are proceeding to complete the Legal department of the *Library*. Towards this end they have given directions for the immediate purchase of all the Reports, not already in the Library, from the Year Books to the present time.

The meetings of Members in the *Hall* for transacting professional business, increase in number; and arrangements are now made to enable Members to make appointments either for regular days and hours (the general hour being two o'clock), or for occasional meetings; and as they are called upon almost daily to resort to the Inns of Court or Law Offices, the Institution will be found particularly useful as a place where they may meet others from distant parts of the town, or from the country, and where the intervals of engagements may be advantageously employed.

SELECTIONS FROM CORRESPONDENCE No. XXIII.

DECLARATIONS DE BENE ESSE.

To the Editor of the Legal Observer.

Sir,

UNDER the head of “Instructor Clericalis, No. II.” in the Supplement for February, the following advice, with respect to the proceedings on a writ of summons, is given to the student:

“4. File a declaration conditionally, until an appearance be entered.”

That appears to me very bad advice, and I certainly think such a declaration would be irregular. The notice to a defendant in a writ of summons is, that in default of his entering an appearance, “the said *A. B.* may cause an appearance to be entered for you, and” (having done that—not before doing it) “proceed therein” (that is, in an action on promises, or as the case may be) “to judgment and execution.” There does not appear to me to be any authority to the plaintiff to declare *de bene esse*.

One of the General Rules of Michaelmas Term last, seems to me conclusive upon the question. By it the plaintiff, in a writ of *capias*, where defendant is not in custody, may declare *de bene esse*, “in case special bail shall not have been *perfected*”—not *put in and perfected*. And if one of the defendants, in a writ of *capias*, shall be served only, and not arrested, and do not enter an appearance, the plaintiff is to appear for him, and declare in chief against him, and *de bene esse* against those defendants “who shall have been arrested, and shall not have *perfected* special bail.”

I know that in point of fact, declarations are filed *de bene esse* upon writs of summons. I think it therefore material to consider how far such declarations are regular; and with that view submit the foregoing observations to your readers.

J. C.

ATTORNEYS TO BE ADMITTED,

Easter Term, 1833.

[Concluded from p. 338.]

Clerks' Names.

Reddell, Edward Henry, 5, Purbeck Place, Lambeth.

Robinson, Henry, Ulverston, Lancaster.
Robinson, Henry, Preston, Lancaster.

Saunders, James, the younger, 4, New Bridge Street.

Scholes, Charles Robert, Dewsbury, York.

To whom articulated.

Jones, Thomas, Milman Place, Bedford Row; assigned to Wilton, Joseph Robert, of John Street, Bedford Row, and by him assigned to Walmsley, John Watson, 43, Chancery Lane.

Yarker, Robert Francis, Ulverston aforesaid.
Pilkington, Richard, Preston.

Pulley, Henry, Norwich.

Allison, John, Huddersfield, York; assigned to Oldroyd, Thomas, Dewsbury; and by him assigned to Upton James, Dewsbury.

Clerks' Names.

To whom articulated.

Sewall, Robert Burleigh, Newport, Isle of Wight.
 Sherwin, William, 12, Gray's Inn Square.
 Smith, Robert Boughton, 14, Orange Street, Red Lion Square.
 Standish, Thomas, Pontefract, York.
 Starlifant, Thomas Henry, Preston.
 Stracey, John, 59, Lincoln's Inn Fields.

 Straker, George, North Shields, co. Northumberland.
 Sturdy, James Barlow Stewardson, Blackburn.
 Tarleton, John Willington, Henley in Arden, Warwick.
 Tasker, James, 36, Sidmouth Street, Regent Square.

 Teague, James Alexander, Giltspur Street.
 Thompson, Samuel Shepherd, Sculcoates, York.
 Tinsley, Charles, 10, Upper Southampton Street, Pentonville.

 Turner, Thomas Hough, co. Chester.

 Unett, George, Smethwick, Harborne, Staffordshire.

 Wade, Armigel, Great Dunmow.
 Waller, Thomas George, Great Russell Street.

 Ward, William, Burslem, Stafford.
 Ward, Richard Danvers, Trevor Square, Brompton.
 Warren, J. Frederick Horatio, Langport, Eastover, Somersetshire.
 Warwick, Ralph Maddison, Cloak Lane.

 Watson, Harry, 10, Aberdeen Place, Maida Hill.
 Wawn, John Twizell, South Shields.

 Welsh, Wm. Inman, Wells.
 Whitehead, Thomas Hutton, Lancaster.
 Whytehead, William, York.

 Wilcocks, James, Goodge Street.
 Wilkinson, Thomas, Canterbury.
 Wilson, William, Albany Street, Regent's Park.
 Wilson, James William, 15, Robert Street, Bedford Row.
 Windus, Ansley, Stamford Hill.
 Wiseman, George, Leeds.
 Woodcock, Joseph, Newman's Row, Lincoln's Inn Fields.

 Woodcock, William, the younger, 11, Sutton Street, York Road, Surrey.

 Woods, Edward, Liverpool.

 Wragge, George Paulson, 25, Upper King Street, Bloomsbury Square.

Sewall, Thomas, Newport aforesaid.

 Fisher, Edward, Ashby-de-la-Zouch, Leicester.
 Rand, John, Guildford, Surrey.

 Wood, William, Pontefract aforesaid.
 Buck, Charles, Preston.
 Murray, James Archibald, Chancery Lane; assigned to Collett, Henry Parker, Chancery Lane.
 Barker, Richard, the younger, North Shields.

 Neville, James, of same place.
 Lea, William Welch, Henley aforesaid, assigned to Cox, John, Red Lion Square.
 Ashhurst, Robert, late of Liverpool, deceased; assigned to Miller, William Spurstow, Liverpool.
 Payne, William, Aldermanbury.
 Woolley, William, of same place.

 Huntley, Edmund, 6, Furnival's Inn; assigned to Pyne, William, 10, Duke Street, Saint James's.
 Edleston, Richard, of Nantwich, co. Chester.

 Unett, John Wilks, of same place.

 Wade, George, Great Dunmow.
 Waller, Samuel, Cuckfield, Sussex; assigned to John Clutton, High Street, Borough.
 Ward, John, Burslem.
 Sampson, Edward, Henbury, Gloucester; assigned to Crossman, Thomas, Thornbury.
 Warren, John, same place.

 Bendle, Robert, Carlisle; assigned to Relph, James, Carlisle, deceased; assigned to Birkett, John, Cloak Lane.
 Williams, William, 31, Alfred Place.

 Bowlby, Russell, South Shields; assigned to Wawn, Christopher Akenhead, South Shields.
 Welsh, Robert, Wells.
 Lodge, Edmund, Preston.
 Thorpe, Anthony, York; assigned to Gray, Jonathan and William, of same place.
 Adamson, James, Ely Place.
 De Lasaux, Thomas Thorpe, Canterbury.
 Lyon, James Wittit, Spring Gardens; assigned to Browne, T. Dickens, Wem.
 Wilson, William, late of Louth, deceased; assigned to Flowers, Field, Goe, Louth.
 Carr, George, the younger, Basinghall Street.
 Tolson, Peter, Knaresborough.
 Brettingham, Thomas Clark, Diss, Norfolk; assigned to Messrs. Kingsbury and Margitson, Bungay.
 Woodcock, William, the elder, Mansfield; assigned to Wright, Henry Jessup, 3, Hare Court, Temple.
 Woods, Peter, Liverpool; assigned to Woods, Peter, the younger, Liverpool.
 Cattlow, J., Cheadle, Staffordshire; assigned to Ingleby, Clement, Birmingham. Intends to apply on the last day of Easter Term to be admitted. Notice dated 28th day of January, 1833.

Clerks' Names.

Wreford, Robert, 4, Warwick Court.

Wright, John Baker, No. 4, Cloak Lane.

Wyatt, Wm., Coleman Street.

To whom articulated.

Tanner, George, Crediton; assigned to Fox, John Elliott, 40, Finsbury Circus.

Haddan, Thomas, Angel Court; assigned to Gatty, Robert, Angel Court, Throgmorton Street.

Kensit, Thomas Glover, Skinner's Hall; assigned to Sewell, Isaac, Salter's Hall.

COMMON PLEAS.

Craig, Edward George, Bocking, Essex.

Seaman, Lewis, Otley, York.

Stokes, Charles, Coggeshall, Essex.

Lane, Michael, Bocking; last year with Messrs. Taylor and Roscoe, Temple, agents of Mr. Lane.

Watson, John, late of Great Yarmouth, deceased.

Andrew, Thomas, Coggeshall aforesaid, to Waylen, Samuel, Coggeshall.

FOR RE-ADMISSION IN THE KING'S BENCH.

Quarles, William, late of Bury St. Edmunds, Suffolk; now of Woodhatch, near Reigate, Surrey.

PARLIAMENTARY RETURNS.

[We have not room at present for the details of these returns; but it may be useful to state the following results, extracted from the papers just printed].

CRIMINALS.

Number of persons charged with criminal offences in England and Wales during the year 1832.

Committed for Trial.

Males	-	-	17,486
Females	-	-	3,343
			<u>20,829</u>

Convicted and sentenced.

To death	-	-	-	1449
Of whom were executed	54.			
Transportation for life	-	-	-	546
28 years	-	-	-	1
14 years	-	-	-	764
10 years	-	-	-	1
7 years	-	-	-	2603
Imprisonment, and severally to be whipped, fined, kept to hard labor, &c.	3 years	-	-	3
	2 & above 1	-	-	230
	1 & above 6 months	-	-	1304
	6 months & under	-	-	7644
Whipping and fine	-	-	-	402
				<u>14,947</u>
Acquitted				3,716
No bills found, and not prosecuted				2,166
				<u>20,829</u>

POOR RATES.

	£	s.
Total sums levied in England and Wales, for the year ending 25th March, 1832	8,622,920	
Payments thereout for other purposes than the relief of the poor—		
England	£1,585,520	4
Wales	60,972	13
	1,646,492	17
Sums expended for the relief of the poor—		
England	£6,731,131	10
Wales	305,837	0
	7,036,968	10
	8,683,461	7
Amount paid to 52,836 persons employed in repair of roads	264,820	5
Amount paid to 17,499 persons employed in parish work	88,532	3

SUPERIOR COURTS.

Vice Chancellor's Court.

WILL.—CONSTRUCTION.

Bank notes in a drawer will not pass to a legatee under the general words "furniture, goods, and chattels," in a will.

This suit was instituted for the purpose of obtaining the declaration of the Court upon the construction upon testamentary papers, which were executed by an elderly lady of the name of Cooke, as her last will and testament. By these papers the testatrix bequeathed, besides

certain legacies, "all her household furniture, goods, chattels, &c. to John Cooke." The sum of 800*l.* in bank notes was found in one of her drawers after her death; and the question for the decision of the Court was, whether the notes passed to John Cooke, under the words "goods and chattels."

Sir *Edward Sugden* and Mr. *Garrett*, for the plaintiff, submitted that it was too clear to admit of an argument, that these notes and monies would not pass under the general words of the will—"furniture, goods, and chattels."

Mr. *Wigram* and Mr. *K. Parker*, for the defendant (John Cooke), admitted that bonds or other securities could not pass under these words; but they contended that money, such as these notes of 800*l.*, would, and that the defendant was well entitled to them.

The *Vice Chancellor* was of opinion that the 800*l.* could not pass to a legatee under the general words of the will.

Gray v. Cooke, Lincoln's Inn, Feb. 22, 1833, before the V. C. *

King's Bench Practice Court.

SCI. FA.—AMENDMENT.

Where the sci. fa., the sheriff's return, the award of execution, the ca. sa., and the warrant, vary in the christian name of the defendant from the judgment roll, the Court will permit the proceedings to be amended according to the judgment roll.

The plaintiff in this case had issued a *sci. fa.* to revive a judgment more than a year old. The judgment, and all the former proceedings, were against John Hook; but the *sci. fa.*, the sheriff's return, the award of execution, the *ca. sa.*, and the warrant, were in the name of James Hook. The defendant was taken in execution on the warrant. The plaintiff obtained a rule *nisi* for amending the *sci. fa.*, the sheriff's return, the award of execution, the *ca. sa.*, and the warrant, by substituting the name of John for that of James, according to the judgment roll. The defendant obtained a rule *nisi* for his discharge out of custody, on the ground of the variance between the *sci. fa.* and subsequent proceedings, and the judgment roll. The two rules came on to be discussed together.

W. H. Watson, on the part of the defendant, contended, that although a *sci. fa.* might be amended by the Court in some instances, the present application for that purpose was too late. He cited *Grey v. Jefferson*, 2 Strange, 1165. But supposing the Court could amend *sci. fa.*, it could not amend the sheriff's return; for by that means the sheriff might be prejudiced; and that the Court could not be entitled to do, under the 8 Hen. 6. c. 12. If the return were not amended, the award of execution, the *ca. sa.*, and the warrant, could not be amended, as there would be nothing to amend by.

* *Vide ante*, p. 225, *Gosden v. Dotterill*, and the cases there cited.

Erle, on the part of the plaintiff, contended, that the application to amend the *sci. fa.* was not too late. He cited *Hampson v. Chamberlain*, Barnes, 3; *Sweetland v. Busley and Browne*, Barnes, 4; *Branswell v. Jero*, 9 East, 316; *Perkins v. Petit*, 2 B. & P. 275; *Mann v. Calow*, 1 Taunt. 221. The sheriff's return might clearly be amended, under the 8 Hen. 6. c. 12. § 2; for an express power was given to the Court by that statute to amend sheriff's returns.

Littledale, J., after taking time to consider, said that he had looked into the cases to see whether the Court could amend the *sci. fa.*, as here required. The result of the cases was, that the amendment was a matter of discretion with the Court. As it did not appear that any prejudice would result to the defendant, in consequence of making the amendment, he should allow it. As to the sheriff's return, the Court had clearly power to amend that, under the 8 Hen. 6. Then, those previous steps being amended, there was something by which the *ca. sa.* and warrant could also be amended. As, however, the expense of these two rules had been caused by the mistake of the plaintiff, the costs of both must be paid by him.

Rule accordingly.—*Thorpe v. Hook*, Nov. 15, 1832. K. B. P. C.

ATTORNEY'S UNDERTAKING.—ATTACHMENT.

An attorney is only liable to be attached for not fulfilling his undertaking, where he has given it for his client.

Application for an attachment against an attorney for not fulfilling his undertaking. The defendant had become indebted to the plaintiff for various sums of money; and the attorney, against whom the present application was made, gave his undertaking to the present applicant for the payment of those sums. Although he was an attorney, he did not act as the attorney for the debtor.

Littledale, J.—The Court has never interfered to attach an attorney for the non-fulfilment of his undertaking, unless he is engaged as attorney in the cause in which the undertaking is given.

Rule refused.—*Ex parte Watts*, Nov. 24, 1832. K. B. P. C.

RE-ADMISSION OF ATTORNEYS.

Applications to re-admit attorneys must be made in term, and in open Court only.

Application to re-admit an attorney, on an imperfect affidavit, and the mover requested permission to produce an amended affidavit at chambers.

Littledale, J.—That is never done. These matters must always be settled in open Court, during term.

Application refused.—*Ex parte Owen*, Nov. 24, 1832. K. B. P. C.

FILING AFFIDAVITS.

Affidavits on which motions are founded must always be filed.

A motion for a rule *nisi* having been unsuccessful, application was made to the Court for permission not to file the affidavits on which the motion was made.

Littledale, J.—They must be filed. It is contrary to the invariable practice of the Court not to do so.

Application refused.—*Johns v. Mills*, Nov. 24, 1832. K. B. P. C.

NOTES OF THE WEEK.

House of Lords.

COMMON LAW ACTIONS.

Lord Wynford's Bill, to prevent the Expense and Delay of Suits in the Common Law Courts, will be read a second time on the 28th inst.

REFORM IN THE COMMON LAW PRACTICE.

The following is the substance, so far as we can collect, of the new Bill introduced by the Lord Chancellor on Thursday evening—principally it appears, if not entirely, in accordance with the recommendations of the Common Law Commissioners:

As to special pleading, the Bill (his Lordship said) would invest the Judges with the power of regulating that practice.

The next object in view affected the old statutory limitations, which were to be remedied, as far as regarded their duration, and to be fixed in cases of bond at ten years.

Another provision was directed to remedy the hardships to which the sureties of Crown debtors were liable under the existing system. They were frequently sufferers from the great delay in making the demands upon the parties for whom they became answerable.

Another provision would enable parties to go into the facts of their cases without the expense attendant upon proceeding with an action in such a manner as to take the opinion of the Court upon them, and receive its judgment, in cases where that could be done without incurring unnecessary expense; with a view to render proceedings shorter, and to lessen their expense.

One provision was, to enable juries to find a verdict for the interest, as well as for the principal, provided a demand had been made for such interest previous to the action; and that the interest found by the jury, under

the direction of the judge, should be from the time of the demand.

The bill provided that arbitration should be lawful in certain cases, and it gave the arbitrators the power of summoning and examining witnesses upon oath, and of deciding upon all the facts of the case. There was, however, no compulsory clause for arbitration.

Another provision was for facilitating the proving of deeds and other documents, whether written or printed; and it provided, that in cases where such documents had been proved already, it would not be necessary to bring down witnesses for the purpose.

There was another clause, which provided that where a Judge thought fit that parties should not be subjected to the expense of bringing their actions before the Courts of Law in Westminster, he should order such actions to be tried before the Sheriffs in County Courts with the assistance of juries. This last provision was a most important step towards the establishment of local and cheap jurisdictions throughout the country; but if he thought that this provision at all anticipated or rendered supererogatory that more effective and general arrangement for the establishment of such local jurisdictions throughout the country which he (the Lord Chancellor) had brought forward, he should not have inserted it in the present Bill; but he considered that this provision was quite consistent with that other and more general measure, and that it would supply some points that might be necessary to render that measure more effective.

The Bill was then read a first time, and ordered to be printed.

House of Commons.

LETTERS PATENT.

The second reading of this Bill has been deferred till the 2d of April. Our readers will find a full analysis of the greater part of it in the present Number. Amongst the alterations, we observe that power is given to extend the *duration* of the Patent beyond fourteen years—we presume (though it is not specified) for another fourteen years. This is to be done with the advice of *Examiners*, who are to be scientific men, and their assistance is also to be called in upon the grant of the first patent; and, on trials of patents, the jury are to consist of scientific men.

Several encouragements are held out to

useful inventors, and improvements made in the method and expense of obtaining Patents. Indeed, the measure is on the whole very creditable to Mr. Godson, its proposer. We shall examine the details at an early opportunity, and notice whatever occurs to us as material.

FINES AND RECOVERIES.—LIMITATIONS OF ACTIONS.—DOWER.—CURTESY.—INHERITANCE.

These Bills have been presented, read a first time, and ordered to be read a second time on Wednesday next, and to be printed. We shall point out any alterations which may have been made in the Bills since they were first introduced.

DURATION OF PARLIAMENTS.

The motion of Mr. Wilks, to prevent the Duration of Parliaments longer than Three Years, has been deferred from the 21st instant to the 14th of May.

SUFFOLK SUMMER ASSIZES.

The second reading of this Bill has been deferred till the 20th instant.

GLAMORGAN ASSIZES.

Mr. Vivian has given notice of motion for a Bill to remove the Summer Assizes for the county of Glamorgan from Cardiff to Swansea.

FEES OF CLERKS OF THE PEACE AND CLERKS OF THE ASSIZE.

A return has been ordered on the motion of Mr. Hodges, of the Fees, Charges, and Emoluments of the Clerks of the Peace and the Clerks of Assize in England and Wales.

FINES AND RECOVERIES IN IRELAND.

Mr. O'Connell has given notice for the 13th inst., of a Bill for the Abolition of Fines and Recoveries in Ireland.

SMALL DEBTS (SCOTLAND).

Notice of a Bill has been given by Mr. Kennedy, to provide for holding Circuit Sheriff Courts in Scotland, for the Trial of Small Debt Causes.

ATTORNEYS TO BE ADMITTED NEXT TERM.

The list of persons who have given notice of their intention to apply next term

for admission as Attorneys in the Courts of King's Bench and Common Pleas, is concluded in the present Number. It is considerably less than the last term. The number then was 199, and is now 146. The re-admissions for the last term were six, and for the next, one.

The admissions last year were less in Hilary than in Easter Term. We shall ascertain the total number during the year after Trinity Term.

ANSWERS TO QUERIES.

Rate of Property and Conveyancing.

LIABILITY OF EXECUTORS. P. 323.

If the representative of a legatee has applied to *A.*, the executor, for an account, which *A.* refuses to give, I think a court of equity would decree an order, with costs, against *A.*, the executor.

H. W.

FEME COVERT.—APPOINTMENT. P. 323.

1. Without an *express* reservation of a power enabling *A.* to make a will *before* her marriage, it will be void; as the marriage articles clearly refer to an *executory* act, and not to a will made *prior* to her marriage. *Vide Doe v Staples*, 2 T. R. 684.

T. T. P.

2. If the will was made prior to the marriage, it was an invalid execution of the power in the settlement, which could not operate until the marriage was solemnized.

H. O. S.

DEVISE OF HEREDITAMENTS. P. 323.

No—only an estate for life. H. O. S.

QUERIES.

Rate of Property and Conveyancing.

LEGACY TO WITNESSES.

F. D. made his will, and devised all his estate and effects, both real and personal, to his son, subject to the payment of his debts, &c.; and after giving several pecuniary and other legacies, he gave the sum of five pounds sterling to each of the witnesses to his will, whoever they might be; are the witnesses entitled to their legacies?

C. S.

Common Rate.

LAND-TAX.—ASSESSMENT.

The owner of a landed estate, the rent of which does not amount to 96*l.*, but which twelve years since let at 145*l.*, has been since that period charged with the annual sum of 7*l.* 10*s.* in respect of the land tax (that being

the amount paid when the estate let at 145l.); and now considers himself fully entitled to redress, on the ground of the diminished value of landed property, and also of the inequality of such assessment, as a specific sum, and not a poundage on the fluctuating value of the property, constitutes the land tax. There is also another obstacle. Previously to the passing of the Land Tax Redemption Act, 38 G. 3. c. 60, the commissioners were empowered, in case of lands overcharged by the pound rate, to make abatement, and to cause the sum abated to be reassessed upon the district, or upon any person undercharged. By § 103 of the same act, the power of the commissioners to make abatement is limited to cases only where the assessment exceeds four shillings in the pound on the annual value of the property. This act is repealed by 42 G. 3. c. 116; in which the remedy of appeal is reenacted, § 181, in nearly the same words. In this case, the amount levied amounts to about 1s. 6d. in the pound. Is there any act or authority by which the original power of the commissioners is revived?

A STUDENT.

MISCELLANEA.

POWER OF THE HOUSE OF COMMONS.

AN information was exhibited in 1629 by the Attorney-General, against Sir John Elliot, Mr. Holles, and Mr. Valentine, for seditious words, contempt, and an assault on the Speaker of the House of Commons.

To this information the defendants appearing, pleaded to the jurisdiction of the Court: that the Court ought not to have cognizance thereof, because it was for offences done in parliament, and ought to be there examined and punished, and not elsewhere. To this plea the Attorney-General demurred, and the defendants joined in demurrer; and the next term Mr. Mason, of counsel for the defendants, endeavoured to support their plea, observing that they were charged, 1. With seditious speeches. 2. Contempt against the king, in resisting the adjournment; and, 3. With a conspiracy to keep the speaker in the chair.

The judges delivered their opinions, that the Court of King's Bench, as this case was, had jurisdiction, notwithstanding these offences were committed in parliament; and that the imprisoned members ought to answer over.

The Lord Chief Justice Hyde said, it was true, an inferior court could not meddle with the judgments of a superior court; but if a particular member of a superior court offended, he might be punished in an inferior court: as if a judge committed a capital offence in that court, he might be arraigned for it in a court of oyer and terminer at the Old Bailey, which was an inferior court to the King's Bench. This being the opinion of the whole Court, it was ruled the defendants should plead over; but they refusing to put in any other plea than to the jurisdiction, judgment was pronounced against them by Mr. Justice Jones, the last day

of the term, viz. that Sir John Elliot should be committed to the Tower, and pay a fine of 2000l., and, upon his enlargement, find sureties for his good behaviour; that Holles should pay a fine of 1000 marks, be imprisoned, and find sureties in like manner; and that Valentine should pay a fine of 500l., be imprisoned, and likewise find sureties.

In the next parliament, which met the 13th of April, 1640, it was referred to a Committee of the Commons, to consider of the breach of their privileges, by Sir John Finch, Speaker of the Commons, 5 Car., by refusing to put the question, on the command of the House to do it: and on the 20th of April, it was reported from the Committee, that Sir John Finch did not say, "He would not put the question;" but that, "he durst not put it;" and, that "he left the chair, not to disobey the house, but to obey his majesty:" whereupon the house resolved, that it was a breach of privilege for the speaker not to obey the commands of the house; and that it appeared, the speaker did adjourn the house by the command of the king, without consent of the house, which was also a breach of privilege.

They were also about to enquire into the imprisonment of Sir John Elliot, Mr. Holles, Mr. Selden, and the rest of the members of the House of Commons, in the 3d and 5th of Car., but being suddenly dissolved, no progress was made in that enquiry: another parliament meeting on the 3d of November, 1640, and a Committee being appointed to consider of the cases of the imprisoned Members, Mr. Recorder Glyn reported from the Committee the sufferings they had undergone in defence of the liberties of the subject: whereupon the House, on July 6th, resolved, (amongst other things) that the exhibiting the information against Mr. Holles, Sir John Elliot, and Mr. Valentine, for matters done in Parliament, was a breach of privilege, and that they, their heirs and executors, ought to have reparation for their damages and sufferings against the Judges of the King's Bench.

THE EDITOR'S LETTER BOX.

A Country Subscriber will observe that we have for several months given the Lists of Bankrupts in the manner he wishes.

We have inserted the queries of a correspondent, and they will probably receive an early answer; but we cannot undertake to establish a sort of Legal Dispensary, to supersede a considerable branch of chamber practice. The answers we are desirous of receiving, are those which refer to cases and authorities: the reader may then judge for himself whether they are sufficiently in point. We cannot undertake the serious responsibility of advising all our querists.

We thank a correspondent for the list relating to the Sheriffs' Courts, and shall probably make use of it in the next Supplement.

We have received the communications of "Medii;" A *; "Aspiro;" M. E.; J. T. S.; A. B.; J. L.; and H. A.; and they shall have early attention.

The Legal Observer.

Vol. V.

SATURDAY, MARCH 16, 1833.

No. CXXX.

—“ Quod magis ad Nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

REVIVAL OF THE LOCAL COURTS BILL.

THE LORD CHANCELLOR having declared his intention again to introduce his Bill for the establishment of Local Courts, we consider it important to advert immediately to the principal objections which have been brought forward from time to time against the measure, and to add such other suggestions as now occur to us. We had expected, indeed, that there was altogether an end of the project; that whatever plausible reasons might have been adduced in its favor some three years ago, the state of the question had so changed, that nothing more would be heard of it.

Conceiving that the distinguished author of the measure had no other purpose in view than that which he eloquently declared in reference to reform of another kind, “ that it was his object to *repair*, not *pull down* the temple of the constitution;”—“ that he should take his stand upon its ancient ways;” and “ that he was not for revolution, but restoration;”—we concluded that ere this his longing after improvement must have been, at least in some degree, satisfied, by the good he had achieved in originating a long series of legal reforms—many of which (of great importance to the suitor) have already taken place, and an ample array of others are in progress or preparation.

Thus the alteration of the Court of Exchequer, the appointment of new Judges, the establishment of a new Court of Re-

cord,—besides the passing of numerous Statutes, and a volume of Rules of Court, have sufficiently shewn the disposition of the Legislature and the Judges to meet the demand of the public in behalf of law reform. Whilst, also, a score of other measures are in agitation, abundantly testifying that there is no intention to leave the work half finished, we had inferred that the thirst for change must have been somewhat satisfied; and that a project which before the end of the next generation of lawyers would have left the seats of justice in Westminster Hall nearly as well occupied as the chairs of petty sessions, might at least be deferred until the effect were seen of the completion of the remainder of the measures before Parliament, and the improvements recommended by the Common Law Commissioners, one of which was stated in our last number (p. 370), and which appeared to us to contain a judicious *substitute for Local Courts*, by authorizing the Judges to send the records in actions under a given amount, to be tried before the Sheriffs with the assistance of Juries.

The Lord Chancellor, however, according to the report of his speech in introducing the Bill, stated, that “ the provision alluded to was quite consistent with his other and more general measure; and he added, if he was not greatly deceived, there could not be a more useful, as he was quite certain that there could not be a more necessary measure, than the one which tended to the establishment of local jurisdictions throughout the country, for the trial of all actions

for a small amount, except some cases touching title, which should be left to the superior Courts of Law. One of the great and chief objects of legislation should be to render justice cheap and easy of access; and he considered the provision in the Bill he then held in his hand as rather ancillary to the general measure to which he had alluded than as at all interfering with its necessity."

"With such an announcement before us, accompanied by an intimation that the measure will be introduced in a few days, it is necessary that the members of the profession,—who are equally interested in supporting judicious, as in opposing pernicious alterations,—should be alive to the magnitude of the question involved in the scheme of Local Courts.

It is admitted by all parties—even by the wildest reformers—that our ancient Courts of Record are admirably adapted to decide, to the satisfaction of the country, every question that comes before them, except in the case of small debts. Now, we suppose no one is absurd enough to wish, that there should be one law for matters of 20*l.* or 50*l.* value, and another for those of higher amount—which would be, in effect, to give the rich the best dispensation of justice, and the poor the worst; and we insist, therefore, that the rational course is, to endeavour to adapt the system (confessedly so good in itself) by proper modifications, to small, as well as large debts. The Bill to which we have alluded would, we think, in a considerable degree, attain the object; and some further improvements might be suggested when the plan came into operation. We conceive, also, that a scale of fees, proportioned to the amount of property in dispute, might be framed, which would be accepted by the practitioner, and but little, if at all exceed the aggregate of costs which must necessarily be allowed under any system above the level of a Court of Requests.

Our readers are aware, that soon after the first introduction of the Local Courts Bill, this work was commenced, and that in the course of the first volume, we brought forward all the objections which then appeared to the measure. Those objections continue in undiminished force, and many of them have gained additional strength. Referring to these articles, and especially to the Letters of "A Barrister^a," we shall, for the present, go over briefly the more prominent points, and, if necessary, discuss them hereafter more at large.

We conceive, then, that the establishment of Local Courts throughout the country, having the effect of withdrawing the greater proportion of business from the Superior Courts, would very soon impair, most seriously, the efficiency of the Bar;—would, at no distant period, degrade both Bench and Bar;—and render the practice of the Common Law Courts so insignificant, that the present class of practitioners, by whose character and responsibility the public are secured, would gradually withdraw themselves, and be succeeded by those who would make up, by indirect means, for the inadequate remuneration they received. The suitors of the Courts, therefore, are equally interested with the profession in preventing this result.

In the next place, we maintain that the experiment cannot be satisfactorily tried by creating Courts in Kent and Durham only. Those counties are not the best for the occasion; but however that may be, the evil consequences of the scheme will not be fully developed until every county is inhabited by a resident Judge in Ordinary. Two good Judges may, but *fifty* cannot be obtained. There may, indeed, be twice the number perfectly eligible to be called, but "will they come when you do call them?" Those who have recently gone to the Bar, though willing to abandon their future expectations, will, of course, not be eligible; and those who have either out-lived their business, or never attained a moderate extent of practice, must be equally objectionable. So that the plan cannot be carried into effect in a way which will be really beneficial to the country, or the true interests of justice.

Supposing, however, that a sufficient number of able men could be induced to abandon the honors and emoluments of the Metropolitan Bar for the obscurity of Provincial Judgeships, the measure would deprive the Superior Courts of a large proportion of those who might supply the place of the present leaders of the Bar, and ultimately diminish the number from which the future Members of the Bench are to be chosen. This would be the direct and immediate effect. The collateral, but not less necessary consequence would be, that the business of the Courts, being less by more than one half, the calls to the Bar would diminish—the practice would fall into few hands—many would withdraw because the emolument was inadequate—and thus the public would no longer possess a Bar so numerous, that the most eminent learning and talent

^a Vol. I. pp. 145, 177, 227.

may be obtained in each department of law; but a few able and active men would probably practise in all the Courts, possessing (compared with their present profound and extensive learning) a smattering of every kind of legal knowledge, but lamentably unfit to succeed to the eminent men of the old system.

Besides this insuperable objection to those who will hereafter administer the Law, we have to consider what will be the state of the Law itself; and it is palpable that it will become altogether unsettled, and be as various in its rules and its administration, as are the Judges in all the counties of England. Such must necessarily be the case in the Local Courts, and the Superior Courts will partake of the general degeneracy; for as men far inferior in experience and attainments to the present Judges are brought to apply the principles of the common law, or to interpret the statutes, their decisions will be inferior, and, even when correct, will obtain but little authority. Thus, it is no gloomy view of the subject, but our deliberate conviction, that the judgment seat will be degraded, and the respect for the laws impaired throughout the country.

It is obvious to remark, that the Metropolis is the most convenient place for the general despatch of legal business. Nothing can be more certain than that less time will be occupied in transmitting instructions to a London Agent than from one country place to another. As a proof of this, and shewing the facility of communication with the capital, it may be observed, that even the expense of postage, taking the country at large, would be considerably less, where the whole of the business of an office is conducted through one London Agent, than by divers persons in other places, though at much less distance. Thus, the change would, in this respect, increase, instead of diminishing expense, delay, and trouble.

We are, as yet, wholly without the means of judging of the comparative expense of the new system and the old. We know, indeed, that the *salaries* (insignificant as they individually are) of the Judges and Officers of the proposed Courts, amount to a very large annual sum. But the *fees* payable to the Court and officers, and the allowances to be made to counsel and attorneys, have never been stated. These must either be of an amount that will not exceed the cost of executing a writ of enquiry before the sheriff, or the boasted cheapness of the plan will be a gross delusion. On the other hand, the costs must be sufficient to induce

counsel and attorneys to practise in the Courts, or there will be a failure of justice; for the parties are not to be at liberty to remove the case to a Superior Court, unless by way of appeal.

On the subject of law expenses, we have constantly urged, that the first object of reform ought to be to remove the legal sinecures—to get rid of the drones—and relieve the real labourers of the burdens unnecessarily imposed upon them. The *quantum* of remuneration might then be reasonably reduced; but until then, we are persuaded that it is both impolitic and unjust to diminish the costs of common law proceedings.

We shall take an early opportunity to continue the subject; and may, for the present, further remind our readers of the objections which were powerfully urged by Lord Brougham against the Welsh Judicature—every one of which, relating to the want of impartiality and competency in the Judge, will apply with tenfold force to the various provincial Courts.

OSERVATIONS ON LORD WYNFORD'S BILL FOR DIMINISHING EXPENSE AND DELAY IN THE COMMON LAW COURTS.

THE title of this Bill, as originally introduced, was "for *preventing* the Expense and Delay of Suits in the Common Law Courts." We suggested, at the time, that it was impossible to do more than *diminish* the expense and delay of law proceedings. There is a point beyond which cheapness and expedition ought not to proceed, for the result would be gross injustice; and we presume the public will give the preference to the administration of good laws, though at some cost, to bad laws, however cheap. And so also expedition and delay are not convertible terms with good and evil. There may be more haste than good speed; and some reasonable time for preparation is necessary to attain satisfactorily the ends of justice. In the new Bill, which we have just compared with the copy given at Vol. I, p. 113, we observe that the title has been somewhat amended, and stands now to "*diminish* the expense and prevent the delay of suits," &c.

In the first clause we perceive that the proceeding by interrogatories before a Commissioner, is to take place *with leave of the Court, or some Judge thereof*. This appears

to be a proper amendment, and will render necessary some preliminary proof, in the form of affidavits, of the propriety of the examination—which, it is evident, in all cases of mere discovery in aid of an action at Law, will supersede bills of discovery in Equity. We are not quite prepared for this change, and shall be glad to have the matter discussed.

The following clause in the present Bill was not contained in the former.

“That if the party to be interrogated shall be in prison or confined by illness, and shall give due notice of such imprisonment or illness, the examination shall be taken at the prison or house in which such party shall be confined at the time specified in the notice of examination, unless the Commissioner shall think proper to appoint some other time.”

In the former Bill there was a power of appeal from additional questions put by the Commissioner, to any Judge of the Court, who might “do what law and justice required.” We hinted that these terms were unusual and indefinite; and in the present Bill we find the following substituted:—
“who may quash or allow the interrogatories objected to, or confirm or set aside what has been done by the examiner.”

In the present, as in the former Bill, we notice that in the clause allowing the examination of the parties on interrogatories, not only the party requiring the examination, but his attorney or agent, is required to state on affidavit that he believes that material benefit will be derived from the discovery on the trial or inquiry of damages, and that there is a good cause of action or defence on the merits, and that the discovery is not sought for delay, but solely for the purpose of obtaining what will be material in evidence. In some cases the Attorney alone, according to the opinion of the Judge, may make the affidavit.

In the present Bill, as in the former one, there is also a provision, that if a particular of the demand be not delivered at the service or execution of the writ, the proceedings shall be set aside with costs, to be paid by the attorney or agent, or sheriff's officer, or person serving the writ.

It may be material to state, that the following clauses, which were introduced into the original Bill, have been left out of the present Bill.

“That from the first day of the term after the passing of the Act, in all actions then depending, or which may thereafter be brought in any common law court at Westminster, any party may give to the other party a notice in the form specified in the schedule, or as near as the circumstances permit, [viz. that he pur-

poses to adduce in evidence the several documents specified, and that the same may be inspected at the time and place named in the notice:] such notice to be served on the agent or attorney of the party suing or defending, one week before the time appointed for inspection, and that the place appointed shall not be distant more than five miles.

“If any party who appears in person be a prisoner, or be confined by illness or bodily infirmity, and shall within two days after the receipt of the notice, or two days after any such person required to inspect shall have been confined, send by the post a notice in writing, addressed to the person from whom the party required to inspect shall have received such notice, at the place from which such notice is dated, a letter stating the cause and place of confinement of the person so required to inspect, then the party requiring inspection shall, by notice in writing to be sent by the post, fix any day, after one day from the time such notice will be received by the course of the post by the party required to inspect, an appointment for such inspection at the place where the party to inspect shall be confined.

“All appointments for the inspection of documents to be between the hours of ten and four; and that the costs attending any persons travelling, and for the inspection of documents, and the production and inspection of the same, shall abide the event of the cause, if the party or parties inspecting shall admit all that such notices shall require to be admitted.

“The documents produced to be distinguished and marked as copies or as originals. The parties not to be obliged to admit documents, unless at the inspection they receive copies of the documents, if they require them, and are allowed to compare them. If the party required to inspect documents does not give a consent to admit them on the trial and the service of notice of inspection, the other party (on proving the documents and notice of inspection) shall be entitled to the costs of travelling, of proving and making copies of the documents, &c.

“An admission in writing of the whole or any part of what is required by the notice, signed by the party, his attorney or agent, the signature to such admission being proved by affidavit or by a witness, shall be deemed sufficient proof, and shall entitle any party to read any document, without further proof of their execution or genuineness, or, if copies, of their being correct copies of the originals, saving all legal objections to the admissibility of such documents, as if they had been proved in Court.

“The Judge or Sheriff to certify the production of documents, in order to enable the party to receive costs.

“Cause may be shewn on taxation why such admission could not have been required; and no costs to be allowed of preparing to prove any such document which shall have been incurred before the admission of it was required, or after an offer in writing by the adverse party to admit such document.”

" Judge empowered to stay execution on judgment against parties who have *bond fide* expended money in improvements, unless the plaintiff will give security to pay what is reasonable and just; the defendant also giving security to leave the property in as good a state as it was before such improvements."

The reasons for these omissions do not appear to have been stated in Parliament; and they seem to be valuable parts of the measure, if it should be passed into a Law. The principle of them is recognized in proving the hand-writing to Bills and Notes.

NEW BILLS IN PARLIAMENT.

ANALYSIS OF "A BILL TO EXPLAIN AND AMEND THE LAWS RESPECTING LETTERS PATENT FOR INVENTIONS."

(Concluded from p. 362.)

That the said Attorney-General or Solicitor-General may direct any and what costs they think fit and proper to be paid to the said examiners, or by or to whom each party respectively; and that the said Attorney-General or Solicitor-General may direct, in his report, whether the letters patent to be granted shall bear date from the day of the petition, as aforesaid, or from the date of his report.

And reciting, that it is expedient that the costs and expenses of obtaining letters patent for inventions in England should be lessened; Be it enacted, that the fees payable at the offices of the Secretary of State, the Attorney-General or Solicitor-General, the Signet Office, the Privy Seal Office and the Great Seal Office, shall and the same are hereby reduced to

of the amount heretofore by custom paid when the letters patent are granted for the term of *fourteen* years, and that the said expenses shall be reduced, and the same are hereby reduced to of the amount heretofore by custom paid when the letters patent are granted for the term of *seven* years.

That the fees payable at the offices of the Secretary of State, Signet and Privy Seal, shall be paid to some person authorized to receive the same at the office of the Secretary of State at the time the inventor leaves his petition there, and that the fees payable at the Hanaper shall be paid to a person authorized to receive the same at the office of the Great Seal.

And reciting, that the costs and expenses of obtaining letters patent are unnecessarily increased when taken out for Scotland and Ireland by the patentee of an invention for England; Be it further enacted, that an inventor who has obtained letters patent for England may have certificates of the grant of the same, which shall be lodged with the Attorney-General or Solicitor-General for Ireland, or the Lord Advocate for Scotland, and be advertised in the *Edinburgh or Dublin Gazette*; and if no

caveats are entered or opposition made, then the said Attorney-General or Solicitor-General for Ireland, or the Lord Advocate for Scotland, may at the end of *fifteen* days from the day of the advertisement in the *Gazette*, report the same, and make out the bill in the usual manner for the grant of letters patent in Scotland or Ireland, but the Sign Manual of His Majesty is hereby dispensed with as far as it has been required in the granting such letters patent for Scotland or Ireland.

And reciting, that persons living in Scotland or Ireland may be desirous of obtaining letters patent for Scotland or Ireland, without taking out letters patent for England, or at least before they take out letters patent for England; Be it enacted, that the Sign Manual of His Majesty the King shall not be necessary to warrant the proper officer to fix the proper seal to such letters patent, but the same may be affixed upon the Report of the Attorney or Solicitor-General for Ireland, or the Lord Advocate for Scotland.

That when a person in Ireland has obtained letters patent in Ireland, or a person in Scotland has obtained letters patent in Scotland, he may obtain a certificate thereof.

And reciting, that the property in letters patent is unnecessarily abridged, without any corresponding advantage to the public; Be it enacted, that the person or persons to whom letters patent may have been granted, shall be at liberty to assign or transfer his or their interest in letters patent, or grant licences to make or use the same in any manner or to any number of persons he or they may think best, for his or their own advantage.

And reciting, that it sometimes happens that patentees do not derive an adequate profit from their inventions during the fourteen years for which the letters patent have been granted: And that there is no remedy but by an Act of Parliament, to enlarge the term for which they were granted; Be it enacted, that at any time before that term is expired, the patentee, or his assigns, may obtain by petition a patent to extend the term; and His Majesty is hereby authorized and empowered to grant letters patent of extension, in the same manner as other letters patent for inventions are to be granted; but the Attorney-General shall, with the assistance of the examiners aforesaid, report upon the fitness thereof, and the terms upon which they ought to be granted, and all costs and expenses of making the necessary report shall be paid and discharged by the persons obtaining the said letters patent for an extension of the term.

And reciting, that great delay, inconvenience, and expense have arisen in consequence of a patentee being often obliged to sue in a Court of Equity, whilst he has a suit depending in a Court of Common Law; Be it enacted, that the plaintiff to a suit in a Common Law Court may, by motion in that Court, or from a Judge thereof, obtain an order to stay the defendant from making or using the invention, unless an account be kept of the sale or use thereof, and also may obtain an order to in-

spect the thing supposed to be a piracy of the invention.

That the defendant may plead the general issue, with which he is hereby bound to deliver a notice of all the objections and defences upon which he intends to rely at the trial of that issue.

That the venue in any action may be changed, on motion to the Court, from the county of Middlesex to the county in which the witnesses reside.

That either party may obtain an order of the Court, that the sheriff do return, amongst the special jurors to serve on the trial, twelve men practically skilled in the arts and sciences, and that each party shall be at liberty to challenge *six* of them; and either party may obtain an order, that the said jurors may examine the drawings and models at least *two* days before the day of the trial.

That every defendant against whom a verdict shall pass for the infringement of a patent, shall pay *three* times the amount of the damages suffered by the patentee, as it may appear by the proofs of the patentee or by the account rendered as aforesaid by the infringer.

That costs to be paid by either party to the other party shall include the costs of scientific witnesses, and also the costs of making experiments.

And reciting, that actions at law may be brought upon letters patent after the patentee has been unsuccessful in one action and has had a verdict recorded against him: And that the present mode of cancelling letters patent for inventions by *scire facias* is dilatory and expensive; Be it enacted, that if the defendant in an action on letters patent obtain a verdict, which is not set aside by the Court in which the action be depending, then the defendant shall be at liberty to apply to the said Court for a certificate, that the said letters patent ought to be cancelled; and the said Court is hereby empowered, on motion to them made, if they think fit so to do, to grant a certificate that the same ought to be cancelled, and the said defendant may take the said certificate to the Lord Chancellor, to whom it shall be a sufficient authority that the said letters patent be by him cancelled.

That if the patentee obtain a verdict, the Court may in like manner, at its discretion, grant a certificate that the validity of the letters patent has been fully tried on the merits thereof, that in all future actions brought upon those letters patent, the patentee shall upon production of the said last mentioned certificate, be required only to prove the infringement by the party sued, and the damages suffered, and nothing more.

That this Act shall come into force and take effect, as to the mode of obtaining letters patent, from the *First day of November in the year of our Lord one thousand eight hundred and thirty-three*; and that all the provisions therein contained, shall, as far as they can, apply to all letters patent then in force, as well as to all letters patent then and thereafter to be granted.

That this Act shall extend to Scotland and Ireland.

REVIEW.

The Practice on the Plea Side of the Court of Exchequer: to which is added, an Appendix, containing the recent Acts of Parliament, and New Rules of Court; also the Forms of Writs and Proceedings in general use, and a Table of Costs as at present allowed on Taxation. By Thomas Dax, Esq., a Master and Prothonotary of the said Court. Second Edition. London: J. & W. T. Clarke. 1833.

MR. DAX observes in the preface to this, the second edition, that since the publication of the first, so many acts of parliament have been passed, and rules of court made, that it has become in a great measure obsolete. The former edition was published about two years ago; so that it appears the Legislature and the Judges have not slumbered at their posts, in the work of Law Reform.

The present edition is intended to be published in two parts. The portion which has just made its appearance consists as follows: 1. Of the Judges and Officers of the Court; the Duties of the Officers; the Regulations of the Office of Pleas; and the business of the Court. 2. Of Persons entitled to sue of Privilege; and the Attorneys of the Court. 3. Of the several kinds of Writs. 4. Of Proceedings against Peers, Members of Parliament, Corporations, Hundreds, Magistrates, Infants, and Paupers. 5. Of Appearances, Bail, Proceedings against Sheriffs, &c. It also contains the several Acts of Parliament lately passed, and the Rules of Court, with the decisions thereon, down to the present period. An Appendix of Forms, and a Table of Costs, according to the present rules of allowance, are appended.

The second part is intended to contain the remainder of the Practice and Forms; and will take the rules and decisions down to the latest period.

It is not often, in a work of this kind, that we can find any extractable matter; but the section at page 10, in which the order and method of conducting the business of the Court are set forth, appears to be useful to lay before our readers, especially in reference to a Court newly opened to the profession at large.

"It is usual for one of the Barons to come

into Court at 10 o'clock precisely, to take common matters, such as swearing in attorneys, justifications of bail, and common motions of course, and they are taken in that order. When they are disposed of, the full Court sit to take the special matters. The Court first call upon the counsel filling the office of postman (at present Sir William Owen), and afterwards on the tubman (Mr. John Jervis), and then the other counsel are called upon, in the usual order.

"There are two special paper days in the week, *viz.* Mondays and Wednesdays. The paper is called over immediately on the sitting of the full Court. It sometimes happens, on account of the Chief Baron sitting in equity, that these days are altered; in which case due notice is given, by fixing up the same in the Court of Exchequer at Westminster, and in the Exchequer Office of Pleas. The Court, if there is time afterwards, proceeds on motions.

"The new trial paper is taken every day in term, when the Court has gone through the bar, provided there be then sufficient time. The Court is strict in taking the causes in the order in which they are set down in the different papers; and if the parties are not present or ready, or some very sufficient reason given, the same are struck out. It is very necessary that this regulation should be strictly observed, to prevent delay, and an accumulation and arrear of business; and notwithstanding the great increase in the business of this Court, this regularity has hitherto prevented any arrear of moment.

"The sitting days at *nisi prius*, both in term and after term, are fixed previously to the term, and printed papers and due notice thereof published. There are usually two days in each term appointed for sittings in London, and two days in Middlesex, and which sittings, when necessary, are sometimes adjourned to the day following. This has been considered more convenient to suitors, than naming more days in the term at intervening periods, as it prevents in many cases the keeping of the witnesses in town.

"The rules for new trials, if not disposed of within the term in which they are moved, are considered as enlarged to the ensuing term, and so on to the term following, and until disposed of.

"If a party against whom a rule to shew cause is granted, applies to enlarge the same, it is usually on the terms of filing his affidavits a reasonable time before showing cause; and the rule, if enlarged until the ensuing term, is drawn up as a matter of course, on condition that the affidavits are filed a week before the term.

"The time for showing cause against a rule of Court (except it be a rule "*nisi*"), is the day after the day mentioned in the rule^a: the time, however, may be enlarged on application to the Court, without notice to the opposite party, if the Court think fit to enlarge it^b.

Upon a rule "*nisi*," the day for showing cause is the day mentioned in the rule.

"On the last day of term, the special and new trial papers are seldom, if ever, called on; nor are motions in respect of awards heard; nor motions for attachment, except for non-payment of costs pursuant to the master's *allocatur*: nor will any rule to show cause, obtained on that day, operate as a stay of proceeding, whether notice of motion be given or not. Nor will the Court grant any rule calling upon an attorney to answer the matters of an affidavit; nor for the master's report, on the examination of a party upon interrogatories, unless with the leave of the Court, granted under very special circumstances.

"There appear to be cases in which it would seem that motions cannot be made against the sheriff on the last day of term, for not returning a writ, or not bringing in the body of the defendant, pursuant to rules for that purpose; but, in fact, such motions are constantly made, and rules granted^c: generally, the practice in such matters should be considered similar to the practice in the other Courts.

"In this Court, it is very usual in cases wherein the Court conceive it would be too much to grant a rule absolute in the first instance, and yet where it appears advisable, to save expense to parties, to grant a rule "*nisi*" (that is to say, "unless cause be shown,") on a certain day: if no cause be shown on that day, the rule makes itself absolute, and the party cannot afterwards show cause against it; if cause is intended to be shown, notice must be given to the attorney concerned in making the motion, a convenient time before the day mentioned in the rule, that he may be prepared to instruct his counsel to make the rule absolute. This is an extremely useful and convenient rule, and very frequently saves considerable expense."

There is also a concise, but full summary of the law and practice of the Court, as to *Attorneys*. The work is well arranged, and carefully digested; and coming from the Master of the Court, must be considered as next in authority to the Court itself.

THE GENERAL REGISTRY QUESTION.

To the Editor of the Legal Observer.

Sir,

THE Report of this Committee of the House of Commons, printed in the second volume of your Monthly Record, appearing, on perusal, very vague and dissatisfactory, I was induced to analyze, and make a few comments upon it; but after having made some progress I aban-

^a *Soloman v. Cohen*, 9 Price, 388.

^b R. G. H. T. 2 W. 4..

^c *Rea v. Sheriff of Middlesex*, 8 T. R. 464; 11 East, 591; 1 B. & P. 312.

done my plan, from the conviction that the labour of any individual, opposed to the law reform which this measure is to produce, would be thrown away, in the absence of such men as Sir Charles Wetherell, Sir Edward Sugden, Mr. Pemberton, and Mr. Knight, from the Commons House of Parliament. Finding, however, that it is not to be a Government question, and therefore hoping that "the law as a science" may stand some chance of escape from that annihilation, I have ventured to transmit a few general observations upon the Registry Question.

It is impossible to deny that the subject matter of this Report is, as stated, "the most important of all the alterations which have been suggested among the various reforms of the law;"—it is one of *some* importance to the profession;—it is of *vital importance to the landed interest*;—and I submit that every individual fairly acquainted with the subject, must have been surprised when he discovered, from the evidence upon which this Report is founded, *an entire destitution of fact*, and the insufficiency of argument which pervades the latter; besides which, it is respectfully submitted, that it shews too much of *nisi prius* zeal in its preparation, and partiality to a favorite theory in its inferences, to be convincing; and in times "when we look beyond the exterior of things," such a Report would not have been satisfactory to an opponent, inasmuch as it does not make out a case to justify its adoption.

It is admitted to be an innovation; and although this, in the opinion of "the many," may be a sufficient recommendation, yet, when viewed as a legislative measure, it is incumbent upon its projectors to shew *the necessity for its adoption*,—it being a nice political maxim, "that no law should be made or altered without sufficient reason;" and it was an observation of one of the wisest of men, that "the necessity of a change in the law ought to precede the desire of reformation, and not the desire of reformation precede the necessity for the change." Unfortunately, Sir, it appears to have become the prevailing practice, to approve every document emanating from authority, the effect of which is either to subvert some old, or introduce some new thing. From this disposition, it is presumed, has arisen that commendation which has been bestowed upon this Report; for whether it be viewed as an expression of opinion in favor of the proposed change, or in the more important light of a statement of facts upon which legislation ought to proceed, it is singularly deficient; and it is an incontrovertible fact, that the fears, and not the judgment of the country, have been openly addressed, whilst the advocacy of the measure has been pre-eminently distinguished by boldness of assertion and an absence of proof.

The profession has been sarcastically accused of a feeling of "corporation honour;" and an alleged tenderness of its emoluments has been assigned as the cause of the slight opposition which has been manifested upon this occasion:

not that I should have noticed this, had it not afforded me the opportunity of saying that, so far as the emoluments of the profession are concerned, it is perfectly satisfactory to one humble member of it, that the evasion of the *imaginary evil* proposed to be remedied by this measure, may be of advantage to the profession, by *introducing a serious and real danger to titles*. The popular cry, to render law intelligible, "so that every one who runs may read," is based upon a delusion; as no person laying claim to rationality can possibly suppose "that the laws of a great commercial country like this, possessed of the elements of freedom, can be dwarfed down to the apprehension of any individual who has not made them his peculiar study." The attempt to popularize the law will only effect its plebeification; and its mischievous tendency can only be equalled by its absurdity, when it is considered (as Dr. Whately has observed) "that the generality of mankind have a strong predilection in favor of common sense, except on those points in which they respectively possess the knowledge of a system of rules; but on these points they deride any one who trusts to unaided circumstances. A sailor, for example, will perhaps despise the pretensions of medical men, and prefer healing a disease by common sense; but he would ridicule the proposal of navigating a ship without regard to the maxims of nautical art."

Registration (and no precautionary measure can effectually prevent it) will operate as a *proclamation of every defect*; and I happen to know an instance where a present holder, more than twenty years ago, paid nearly 20,000*l.* for his estate to an individual now living, upon whose death, his sister's son, as tenant in tail (whose right was supposed to be defeated by the exercise of a power), will be entitled to claim the estate under circumstances *necessarily* appearing on the title, and which no suppression of deeds can avoid—*notwithstanding the title was approved, the point not having been then mooted, although it has since, and there are two or three decisions against it*. Under the present system, the purchaser can not only guard against an exposure, but can quietly take the most effectual measures for fortifying the title; whilst under the system of a Registry, *the defect would not only be before the world, but the very circumstance of endeavouring to amend it would excite attention and lead to its discovery*. Respectfully protesting against Mr. Slaney's assertion, as stated in the third volume of the Legal Observer, p. 371, "that those entrusted to *make out* titles are frequently, if not *generally*, compelled to proceed upon pure guess work," it may be admitted, that time, the great innovator and improver, has not been inactive in legal science, and therefore it is that men of the greatest eminence, and whose character places them above suspicion, so generally recommend the proprietor of an estate which has been for some years in his family, to have the title investigated before he attempts to deal with it—advice proceeding not from a

regard to their own interest, as hath been ignorantly supposed, but from a just sense of their duty to their clients—they well knowing, that although a vast majority of titles cannot be impeached, there are numbers which (from particular circumstances) may be so; and which a Registry will only expose, instead of cure.

But to return to the Report. Without, of course, attributing any improper bias in favor of the Bill, it is apparently irregular, though probably justified by Parliamentary usage, for any of the committee, who by their appointment are constituted judges, to place themselves in the subordinate situation of witnesses; and it is particularly observable that both the learned gentlemen who were so examined had previously appeared in the character of advocates; the first, Mr. Campbell, is the parent of the Bill; the other, Mr. Spence, is an avowed disciple of the Alterative School. The object of the Bill, it is presumed, is to prevent fraud arising from a suppression of deeds; but I have not been able to discover that any instance of such fraud has been adduced on behalf of the measure before the committee or otherwise, and therefore its necessity is supposed entirely to rest upon the bare possibility of this particular species of fraud hereafter appearing. To guard against which imaginary evil, we are called upon to overturn the whole system of conveyancing, the excellence of which has shewn itself under that humble confidence which it is the effect of this measure to libel, as a satisfactory security, in all the numerous and complicated transactions in which it has been called into operation; and it appears from the evidence, that if it had not been for the riots in 1780, when the deeds in the office of Messrs. Way and Shepherd were lost from being removed, without any apparent necessity, and the circumstance of some deeds having been *stolen* from the office of Mr. Adlington by two of his clerks, not a single *fact* would have been brought before the committee. These, however, were extraordinary circumstances, and do not appear to affect the question of fraud, upon which the necessity for this measure is placed; the first tells rather against the measure than for it, inasmuch as a Registry Office, supposing that we should unfortunately have “our glorious days of July,” would no doubt be considered a marked place for attack. Referring shortly to Mr. Campbell’s evidence, it appears that it not only effectually negatives, if it does not destroy, the principle of the Bill, but shews that a Registry will, *in fact*, impose additional inconvenience and expense, as also additional risk upon purchasers. Mr. Campbell replied to a question which is put in the shape of an observation, “Suppose I wish to buy a forty shilling freehold in Westmoreland, I have to send up to London to know whether the vendor has a right to make the sale, before I pay him.”—“Yes, if you have no confidence in him.” Now the principle of the Bill, as generally understood, in plain language, is, that the owners of real property in this kingdom and

their solicitors, are mostly such ~~as are not fit to be trusted~~ that they are not fit to be trusted. It is true there is not a tittle of evidence to support this,—in the absence of which it may be fairly presumed that it is unfounded. Now, Sir, if this principle of confidence, accompanied with the investigation which is invariably bestowed upon conveyancing transactions, has hitherto been a sufficient security for a purchaser, why throw upon him this additional inconvenience, expense, and risk, *from all which he is now wholly free*. This appears from Mr. Campbell’s evidence, who says, in allusion to the point respecting confidence, “The argument is this: ‘At present there is perfect honesty; we have been proceeding with entire safety upon confidence; the same honesty will prevail.’ They may proceed on confidence hereafter as safely as they do now for any thing prior to the execution of the deed; there is a new burden cast upon the purchaser, he is now in no danger from a deed subsequently executed, BUT AFTER REGISTRATION HE WILL BE EXPOSED TO THAT; the deed between him and his vendor will be good without registry, but not as against a subsequent purchaser; therefore that imposes upon him the necessity of having his deed registered.” The only expense, (and risk) will be the sending it to the county town or to London.

These observations have extended beyond the limit intended, and preclude some additional ones with which, if these are accepted, I may probably trouble you, relative to the balance of evidence, when closely examined, being rather against than in favor of the measure; and some very able remarks made by Mr. Walters of Newcastle, relative to the probability of its leading to a monopoly of respectability and talent in London, to the disarrangement and disadvantage of the body politic.

G. B.

THE REVISING BARRISTERS.

WE have now before us the return, which was moved for by Mr. Hume, of the number of the Revising Barristers, “stating the name of each barrister, and of the district or place where employed; together with the number of days employed, and the amount of money paid or payable to each by order of the Lords of the Treasury, as salary for the said duties, and for travelling and other expenses incurred by him in respect of such employment.”

We shall print this return at length in the Supplement for the present month; and it does not call for much observation. One hundred and sixty-eight barristers were employed, on the average of about twenty-one days each. The total amount of salaries, with the exception of two gentlemen, as to whom the return is deficient, is,

18,873*l.* 16*s.*, which is little enough for their services. The travelling and other expenses are only 10,952*l.* 3*s.* 9*d.*, making a total therefore of something under thirty thousand pounds. We think that the greatest lover of economy and retrenchment can hardly find fault with this expenditure; and it is much to the credit of the gentlemen employed, that it is so moderate; and that no one action has been brought against any of them, on account of the discharge of their duties, which have been ably and zealously performed.

LECTURES OF THE INCORPORATED LAW SOCIETY.

THE following announcement has been placed up in the Hall of this Society:—

“Lectures being intended to be delivered on the Principles and Practice of *Conveyancing, Equity, and Common Law*, Members of the Society, desirous of proposing Gentlemen qualified and willing to undertake the delivery of such Lectures, will have the goodness to communicate the names of such Gentlemen to the Secretary, on or before the 4th of April.

(Signed) “R. MAUGHAM, Secretary.”

SUPERIOR COURTS.

Lord Chancellor's Court.

COSTS.

Where on an issue from this Court, to try whether it was a custom of engravers to retain to themselves from eight to twelve copies from each plate engraved for an employer, the Jury found a verdict, that by custom the engravers had a right to retain so many, but not to sell. In an action of trover for the engravings retained by the engraver, another jury negatived the custom altogether.—On the question of costs of the two trials, this Court, approving of the latter finding, held the plaintiff entitled to the costs of both.

The bill was filed by the plaintiff in this case for the purpose of getting possession of several engravings, which were executed by the defendant, Mr. Heath, according to order, to illustrate and embellish the works of Lord Byron and other poets. Mr. Heath retained eight copies of each engraving for his own use. He afterwards fell into pecuniary embarrassments, and was declared a bankrupt. His assignees ordered the engravings to be inserted in the

bill of sale of his goods and effects. It was from that bill that the plaintiff discovered the engravings were copies of those engraved for him, and retained without his consent. Upon filing his bill he applied for and obtained an injunction against the defendants, to restrain them from selling the engravings until the right to them could be ascertained. Mr. Heath, in his answer, alledged, in support of his claim to the engravings, a custom among engravers to retain from eight to twelve copies of every engraving executed by them, for their own use. This right was denied on the other side, and after argument, an issue was directed. To the verdict given upon that trial for the defendants, the jury added that Mr. Heath had “a right, according to the custom of engravers, to retain a certain number of those executed by him, but not to sell them.” This finding was contrary to the Judge's charge, and not approved of by him. After some further proceedings in this Court, an action of *trover* was brought for the engravings; and the verdict in that action negatived the alleged custom among engravers either to retain or sell. The object of the bill being thus attained, the only question that remained for this Court, was as to the costs of the proceedings at law. That question was argued some time ago on behalf of the plaintiff and of the defendant Heath, and also of his assignees personally.

The Lord Chancellor, having taken time to consider the point, now gave his judgment. After stating the circumstances at some length, his Lordship was of opinion that he could not throw on the plaintiff the costs of those issues, in whole or in part. The jury ought to have found on the first issue the verdict which was found on the second. It was not the plaintiff's fault that he was driven to the second trial. It was absurd to say that an engraver had a right to retain the copies, but not to sell. For what other purpose could a person desire to retain from eight to twelve copies than to make advantage of them? If the alleged custom was to retain one or two copies, as a remembrance of the person of whom the engraving was a picture, there might be some reason in that custom to retain, but not to sell. But to retain, without a right to sell, from eight to twelve copies, was too absurd, and the second trial was necessary to establish the right. The costs, therefore, should fall on Mr. Heath.—Whether they were to be paid out of his estate, or by him personally, made no difference, as his estate, his Lordship was happy to learn, was more than adequate to pay 20*s.* in the pound.

Murray v. Heath and others, at Lincoln's Inn, January 31st, 1833, before L. C.

Rolls Court.

TRUST.

A trustee transfers the trust fund to A., who, upon the trustee's death, becomes his personal representative, and continues to pay over the exact amount of the yearly proceeds

of the trust fund for several years, as the trustee himself did; but afterwards refuses to continue to pay, alleging that all former payments were out of his testator's assets, that they are exhausted, and that he was ignorant of any trust property.—Held, that A. is liable, both personally and in his representative character.

Mr. Pemberton said, the bill was filed by a Mrs. North and others, claiming benefit under the will of Mr. Fountain North, against the personal representative of the executor of that will; and it prayed that the defendant be ordered to re-invest, for their benefit, 1140*l.*, three per cent. reduced annuities, with the dividends thereon since 1830. The bill stated, among other things, that in the year 1817, Mr. William Noble, the executor of the will mentioned, invested the stock in question, in pursuance of the trusts of the will, and paid the dividends thereof to the plaintiff, Mrs. North, until his death in 1823. From that time his nephew and executor, Mr. John Noble, the defendant, continued the payment of the dividends up to 1830, when he stated to Mrs. North that he should discontinue it, adding that there was no stock standing in his testator's (W. Noble's) name—that he had never received any dividends;—but that, as his uncle used to pay her so much a year, he also made the payments hitherto from his uncle's assets, wholly ignorant of any obligation to do so, and that those assets were now exhausted. The plaintiffs were surprised at this statement, and directed an inquiry, the result of which was a discovery—(now in evidence in the cause, namely) that in the year 1821, William Noble had 2184*l.* three per cent. reduced annuities standing in his name,—1044*l.* of which he held as trustee under the will of a Mr. Adolphus, and the remaining 1140*l.* as executor of Mr. F. North;—that in July 1821, a transfer of 2000*l.* of that stock was made to Mr. John Noble, the defendant, who, in a few days after, re-transferred 1000*l.* thereof to William Noble, and paid over the proceeds, 1044*l.* the trust fund of Mr. Adolphus, to his executors; and about four years afterwards sold out the remaining 140*l.* of the stock. Upon this evidence, he submitted that these transfers and retransfers were in fraud of the plaintiffs, and that the defendant was bound to restore the trust fund, and pay the dividends thereon from 1830, and also the costs of the suit.

Mr. Lynch was on the same side.

Mr. Rolfe and Mr. Barber, for the defendant, maintained that he was wholly ignorant of any stock or trust fund in his uncle's name for the benefit of the plaintiffs. The transfers of stock arose in this manner:—The defendant had sold a freehold property to William Noble, who, as security for the purchase money, transferred to defendant's name 2000*l.* stock, of which the defendant retransferred 1000*l.*, upon receiving payment of so much of the purchase money, and another sum of 1044*l.* upon receiving further payment. The defendant, knowing that his uncle was in the habit for many years of paying Mrs. North two half-yearly sums of 17*l.*

and a fraction each, continued those payments, as executor, out of his testator's assets. These assets being now exhausted, he was unable to continue the annuity.

Mr. Pemberton, in reply.—There is no evidence of the purchase alleged by the defendant; and his pretence of ignorance of the trust-fund out of which he paid the exact dividends for seven years, without question or inquiry, is altogether incredible. At all events, he was liable to restore this fund, as representative of the original trustee, the executor of Mr. North's will.

The Master of the Rolls.—As the defendant paid the dividends of this sum of stock to Mrs. North for a period of seven years, it must be intended that he had taken the proper means to inform himself of the nature of that lady's claim, and of the liability of his testator. The defendant himself received 2000*l.* of the stock standing in the name of his uncle, and had afterwards returned 1000*l.*, for the purpose, as he must have been aware, of enabling Mr. William Noble to transfer the stock called for by the executors of Mr. Adolphus. The only two grounds upon which the defendant could have continued to pay the dividends to this lady, were, that he knew the trust fund to have been applied to his own use, in which case he would be a trustee for the plaintiffs, and personally liable; or that he knew his testator to have been liable, as guilty of a breach of trust. It was difficult, under the circumstances of this case, for the Court to resist the conclusion that the defendant paid the dividends, because he knew that the trust fund had been applied to his own purposes. It was said by the defendant in his answer, that he had reinvested the sum of 1000*l.* stock, because William Noble had paid him the amount of that stock at that time; but this was a most incredible statement. There could be no doubt that the defendant knew the purpose to which the stock so re-invested was to be applied. But upon the other ground the defendant would be equally liable; for considering this as a demand upon the assets of his testator, the Court would not permit an executor to defeat the diligence of a claimant, by making payments for a period of seven years, and then withdrawing himself from liability by alleging that there were no assets. Upon these grounds there must be a personal decree against the defendant, with costs.

Bentham v. Noble, at the Rolls, Feb. 22, 1833. M. R.

King's Bench Practice Court.

COSTS.

Where a defendant is not entitled to the costs of witnesses, on issues found for him, under § 74. of 1 Reg. Gen. H. T. 2 W. 4.

This was an action for libel. The declaration contained three counts. The pleas were, first, not guilty to the whole; and secondly, several justifications, to some of which there were replications and issues thereon; and to the others, demurrers and joinders. The

trial took place before the demurrers were argued, and a verdict was found for the plaintiff generally, damages one farthing. A summons was afterwards taken out, calling on the plaintiff to shew cause why the verdict found for him should not be entered on the first count only, and for the defendant on the second and third counts. The summons was heard before Lord Lyndhurst; and, after time taken to consider, he made an order. Afterwards a summons was taken out, calling on the defendant to shew cause why the plaintiff should not be at liberty to elect on which count he would take his verdict. He elected to have it on the third count. And the verdict was accordingly entered, and an order was obtained conformable thereto for the plaintiff, on the third count, and for the defendant on the first and second counts. The demurrers were only applicable to some of the pleas to the first and second counts, which were found for the defendant. It was agreed between the attorneys that no argument should take place. All the plaintiff's witnesses were necessary in support of the count found for him; and all the defendant's witnesses were as necessary in support of the pleas to the count found against him, as in support of those to the counts found for him. On taxation, the Master allowed the plaintiff the general costs of the cause, as applicable to the third count only, including all his witnesses; and to the defendant the costs of the pleadings only in respect of the first and second counts. He allowed no costs of the demurrers to either party, the argument having been mutually abandoned. He allowed the plaintiff the costs of the summonses to amend the entering of the verdict, and consequent thereupon.

White moved for a rule nisi to review the Master's taxation; on the grounds, first, that the costs of the summonses ought not to have been allowed against the defendant; and, secondly, that the Master had not allowed the defendant sufficient costs. On the first point, he submitted that the defendant was rather entitled than liable to the costs of the summonses. He succeeded on the first summons; and the second one became necessary in consequence of the plaintiff not having claimed his election on the occasion of attending the first. On the second, he referred to 1 Reg. Gen. H. T. 2 W. 4, § 74: "No costs shall be allowed on taxation to a plaintiff upon any counts or issues upon which he has not succeeded; and the costs of all issues found for the defendant shall be deducted from the plaintiff's costs." And contended that, as the defendant had succeeded on two out of the three issues, he was entitled to two thirds of the expenses of his witnesses, in addition to the costs of the pleadings already allowed him. He also contended, that as the plaintiff had abandoned his demurrers to the defendant's pleas, the defendant was entitled to the costs of those demurrers.

Thesiger appeared in the first instance to oppose the application: and contended, that as all the witnesses on the part of the defendant were as necessary to him in support of his

case on the third count, which was found for the plaintiff, as they were on the first and second counts, they must, on taxation, be wholly considered as witnesses on an issue on which he had succeeded; and therefore the defendant not having succeeded, he was not entitled to the costs of those witnesses. The costs of all the witnesses being disposed of, nothing remained to be considered on taxation but the pleadings of the issues on which the defendant had succeeded; and those costs the Master had allowed him. As to the costs of the demurrers it had been mutually agreed that no argument should take place upon them, neither party could be entitled to any costs.

Parke, J.—I think the defendant ought not to be charged with the costs of the summonses. If the first and second counts had been struck out, the defendant would have been in no worse situation on the facts of the case than he is now, because his witnesses were necessary on the third count. On that count the plaintiff has succeeded, and therefore the defendant cannot be entitled to any costs. He has been allowed the costs of the pleadings of the issues found for him. As to the demurrers, it appears that by mutual consent they were not argued; and therefore; neither party was entitled to costs.

Rule absolute for deducting the costs of the summonses, and refused as to the rest.—*Richards v. Cohen*, January 25, 1833. K. B. P. C.

EXAMINATION OF WITNESSES ON INTERROGATORIES.—CRIMINAL PROCEEDINGS.

The 1 W. 4, c. 22, § 4, does not apply to criminal cases.

Curwood moved for a rule to shew cause why a commission under the 1 W. 4, c. 22, § 4, should not issue to examine witnesses in France, on an indictment against the defendant for perjury. The words of the section were, "in every action;" but in the present case, his application referred to an indictment. As, however, the act was a remedial one, the Court might be disposed to extend its provisions to such a case as the present.

Parke, J.—This is not an action. The distinction between an action and an indictment is clear. The statute only applies to actions; and therefore the present application cannot be granted.

Rule refused.—*The King v. Lady Briscoe*, Jan. 23, 1833. K. C. P. C.

UNIFORMITY OF PROCESS ACT.—IRREGULARITY.—SUMMONS.

The forms in the 2 & 3 W. 4, c. 39, must be strictly followed.

J. L. Adolphus shewed cause against a rule for setting aside a summons for irregularity. The alleged irregularity was, that the name of the plaintiff was not stated as the person who

would enter an appearance for the defendant if he did not comply with the exigency of the process. That was an immaterial omission; for it must be quite clear from reading the summons, who would enter the appearance in case of the defendant's default; because the name of the plaintiff had appeared in the previous part of the summons as the person giving notice.

Parke, J.—That omission is an irregularity. The statute provides the form, in which the summons is to be drawn; and if parties will not take the trouble of looking at the act before they proceed, they must take the consequences. If we once enter into the question as to what is material or what is immaterial in the process, we shall have innumerable questions of that sort coming before the Court. The best way is, to make parties remember the course they ought to pursue, by setting aside their proceedings for not doing what they ought.

J. L. Adolphus then pointed out a fatal defect in the jurat of the affidavit on which the rule had been obtained, on which it was discharged.

Rule discharged with costs.—*Smith v. Crump*, Jan. 22, 1833. K. B. P. C.

Court of (Equity) *Eschequer.*

PARTNERSHIP.—JOINT LIABILITY.

A. and B., partners, undertake professional business for C.; but A. was to have the management of it, without any interference of B. Several sums of money are paid by, and on account of C., in the regular course of business; and the payments appear, from evidence, to have been made on account of the business which the partners undertook: Held, that such payments were made to the partnership, and that B., the surviving partner, is liable to account for them.

In the following judgment, given by the *Lord Chief Baron* on Monday last, is stated as much of the facts as is necessary to understand the question decided by it.

His Lordship said—"This case came before the Court upon exceptions to the Master's report; and the question raised by them was, whether sums of money paid to Mr. Charles Kaye, of the firm of Freshfield and Kaye, solicitors, were to be considered as paid on account of the firm, so as to make Mr. Freshfield liable for them. The facts, as far as it is now necessary to state them, were these:—In the year 1824, the affairs of Mr. Leigh were greatly embarrassed. It appears that he had granted mortgages on his property to the amount of 40,000*l.*, and that he granted redeemable life annuities to the amount of 100,000*l.* To relieve him from these embarrassments, it was proposed that application should be made to the Globe Insurance Company, for a loan. Messrs. Freshfield and Kaye were retained by Mr. Leigh for transacting that negotiation; but it appearing

that Mr. Freshfield was already the solicitor for the Insurance Company, it was agreed that this business should be conducted by Mr. Kaye. Large sums of money were paid to Kaye in the course of the transaction; and the question was, whether Mr. Freshfield was responsible for those sums. The principle applicable to cases of this sort is, that when a partnership is employed to transact business, and one partner only acts therein, money paid to that partner for the purpose of carrying on the business, is considered as paid to the partnership. It is, with reference to that principle, material to consider whether the sums of money paid by or on account of Mr. Leigh to Kaye, had been paid in the regular course of business, to carry on the transactions which the partnership had undertaken. It appeared that there were several charges for judgments, and other law expenses, which it became necessary for Mr. Leigh to pay, previous to the completion of the loan transaction. The necessary sums were advanced by the Globe Insurance Company, and were applied to those purposes; and that was done in the ordinary course of business. It appeared from the evidence of Freshfield and Kaye's conveyancing clerk, and from the entries in their books, that the partnership acted in these transactions; and I am therefore clearly of opinion that the partnership is liable for the sums so advanced, and proved to have come into the hands of Kaye. It was said, that Kaye was not worthy of being trusted, and the result proved that he was not. If Mr. Freshfield knew that, he ought to have put parties on their guard, by cautioning them not to advance money to Kaye." His Lordship having gone through a great many items in the accounts, proceeded to say, "The cash advanced by the Globe Company was paid in respect of this transaction, and was applied partly to the discharging of the mortgages. At that period there was no other transaction between Mr. Leigh and Mr. Kaye. If, then, two persons in partnership engage to carry on business for a third person, and there is no private transaction between one of them and that person, the money paid to that partner must be held *prima facie*, as paid for the purpose in which the partnership had engaged. If there had been a private transaction between the employer and one of the partners, money paid to that partner individually may have been intended to be applied to the private transaction, and the *onus* of proving that it was not so intended, is cast upon the employer or person paying it, and charging the partnership with it. There are several sums in the accounts subsequently paid to Kaye, apparently on account of some private transactions between Mr. Leigh and Mr. Kaye; and as Mr. Leigh has not satisfied me that such payments were not intended to be applied to those private transactions, I shall direct further inquiry as to them. Whether, therefore, these sums (which his Lordship specified) were paid to the firm for transacting the business in which the firm engaged, or to Kaye in his individual character, is a point that requires further inquiry; and I will not

now confirm the report, as it respects those sums: but as to the other payments, which appear to me to have been made to the partnership—and Mr. Freshfield, on whom the burthen of proof to the contrary lay, has not given such proof—I am clearly of opinion that Mr. Freshfield is responsible for those sums, as being paid on account of the partnership, which he represents.”

Freshfield v. Leigh, Equity Exchequer, Westminster, Feb. 25, 1833, before Lord Chief Baron.

NOTES OF THE WEEK.

House of Lords.

SUITS AT COMMON LAW.

LORD Wynford's Bill remains for the second reading on the 28th instant. We refer to some remarks on the subject in another part of this Number. There are some useful clauses in the Bill, which we shall be glad to see passed, either in the form of a distinct measure, or incorporated in the Bill last brought in by the Lord Chancellor.

LAW AMENDMENT BILL.

We have not yet obtained a copy of the Bill, of which last week we gave a report from the Lord Chancellor's speech. We should rather prefer that the Bill were framed in exact accordance with the Report of the Common Law Commissioners, out of which it has arisen; and that if any alterations be deemed necessary, they should be introduced after the reasons for them have been explained. The grounds and principles of the several provisions would then be fully before Parliament and the public, and the profession would be better enabled to appreciate the value of the alterations proposed. The Bill was read a second time on Thursday, and the discussion of its principle may be expected to take place on the motion to go into Committee on the 22d inst.

House of Commons.

FINES AND RECOVERIES. — LIMITATION OF ACTIONS. — DOWER. — CURTESY. — INHERITANCE.

These Bills have been read a second time, and are to be committed on Wednesday the 27th instant. We have perused copies of all except the first, which has not yet reached us. They are the same as the Bills of the last two Sessions, except in a few verbal particulars. We shall notice the effect of these measures in an early Number.

FINES AND RECOVERIES (IRELAND).

A Bill to abolish Fines and Recoveries, and for substituting more simple modes of Assurance in Ireland, has been ordered to be brought in by Mr. O'Connell and Mr. Serjeant Peirce.

SERJEANTS' INN, CHANCERY LANE.

A petition has been presented for leave to present a petition for a Bill bearing the above title, which, we presume, means, to effectuate an "agreement" mentioned in the votes, and which agreement, we understand, is intended to vest in the Society of Serjeants the freehold of Serjeants' Inn (at present held for a long term), preparatory to taking down and rebuilding the Inn.

Thus, it appears, some effectual movement is at last about to be made for the due accommodation of the learned Judges in transacting business at Chambers. We trust that the several other improvements in regard to the Courts and Law Offices, and the Public Records, will not be lost sight of in the intended improvement. An opportunity like the present, of uniting the various important objects required for the despatch of legal business, may not soon occur again.

GLAMORGAN ASSIZES.

The motion for a Bill to remove the Assizes from Cardiff to Swansea, has been deferred till the 27th instant.

LUNATIC COMMISSIONS.

This Bill, which appears to have somewhat lingered since it left the Upper House, was read a first time on the 12th instant.

GAME LAWS.

Mr. Lennard has given notice for the 28th instant, of a Bill to repeal sections 7 and 8 of the Game Act (1 & 2 W. 4. c. 32), and also so much of section 30 as is contained between the words "provided always," and the end of the Act.

The 7th section provides, that under existing leases the landlord shall have the game, except the right of killing game has been expressly granted, or a fine paid, or the term exceeds twenty-one years. The 8th section provides, that the Act shall not affect any existing or future agreements respecting game, nor any rights of manor, forest, chase or warren.

The words referred to in section 30, relate to proceedings for trespass in the day-time upon lands in search of game, and provide that the licence of the occupier shall not be a sufficient defence where the landlord is entitled to the game, and that the party entitled to the game may enforce the penalty.

JUSTICES OF THE PEACE.

Mr. Lamb has given notice of a Bill to renew the Act for the more effectual Administration of the Office of Justice of the Peace in and near the Metropolis; and of another Bill to render more effectual Proceedings before Justices of the Peace in certain cases.

HIGHWAYS.

This Bill has been read a second time, and committed for the 15th of April. An analysis of the Bill will appear in our next number.

DRAMATIC LITERARY PROPERTY AND PERFORMANCES.

Bills to amend the Laws relating to Dramatic Literary Property, and for regulating Dramatic Performances in London and Westminster, &c. have been brought in by Mr. Lytton Bulwer and Mr. O'Connell. As soon as these Bills have passed, we trust the more general question of the Laws of Literary Property will be entered upon.

SMALL DEBTS.

A Bill has been presented and read a first time, for the more easy and speedy Recovery of Small Debts within the Township of Hyde and other places in the county of Chester.

ANSWERS TO QUERIES.

Law of Property and Conveyancing.

HEIR.—TAIL-MALE. P. 355.

An estate tail expires when there is a failure of issue inheritable to it, and the donor may then enter. Co. Litt. 25 (a). But I apprehend, that as the ultimate fee simple of the land, expectant on the failure of issue male, vests in the donor (2 Black. Com. 112), his heir, and *not* his *heir-male*, would take in the case proposed.

J. L.

JOINT TENANTS. P. 323.

Forfeited to the King: otherwise, if they had been seised in fee simple; or if husband and wife had been seised in the *nature* of joint tenants; *viz.*, *per tout et non per mie*, and not *per mie et per tout*.

H. O. S.

COPYHOLDS.—LEGAL ESTATE. P. 323.

C. is effectually clothed with the legal estate in the entire premises. The admission of B., the tenant for life, was the admission of the remainder-man, A.; and the words in the surrender from A. to C. are adequate to pass the reversion.

H. O. S.

QUERIES.

Law of Property and Conveyancing.

BEQUEST.—ANNUITY.

A. B. bequeathed an annuity to his daughter, payable *during the life of his widow*. The daughter *survived*, and for a time received her annuity. She is now dead, and the widow refuses to continue the payment of the annuity to her legal representative, upon the ground that it determined at the death of the daughter. Can the widow justify the refusal?

T. S.

DIVIDENDS.—TENANT FOR LIFE.

A., by his will, bequeaths to his wife for life the dividends on certain stock in the three per cent. reduced bank annuities, with remainder over. The testator died at three o'clock in the morning of the day on which the dividends are payable. Do the dividends in question go to the tenant for life, or to the executors?

ASPIRO.

Common Law.

POWER OF A CORONER.

Has a coroner, when holding an inquest, power to compel a surgeon, *who has no previous knowledge of the cause of the death of the deceased*, to attend and inspect the body, that he may afterwards be enabled to give evidence of the cause of his death? And if not, then can he compel a surgeon, *who attended or saw the deceased before his death*, to inspect the body after death, that he may give better evidence of the cause of death? And is the surgeon inspecting entitled, in either case, to any, and what pecuniary compensation, for his attendance and services? and from whom? And will he be justified, either in refusing to inspect, or in withholding his evidence, until he is paid?

A.

ALLEN.—MARRIAGE.

A woman seised in fee, marries an alien :
1. Does the husband take any, and what estate, in the land? 2. Would the Crown, on office found, take any, and what estate? 3. Before office found, in whose name should a distress be taken? 4. Upon whose demise should an ejectment be brought, if it became necessary to eject a tenant? MEDII.

MISCELLANEA.

GRANVILLE SHARPE, AND THE CASE OF THE SLAVE STRONG.

In the year 1765, one Jonathan Strong, who had been a slave at Barbadoes, received medical assistance from William, the brother of Granville Sharpe, and being restored to health, was claimed by his former master, and lodged in the Compter. The poor black sent to Mr. Sharpe, who soon obtained a hearing of the question before the Lord Mayor.

When the appointed day was come (Sept. 18,) he attended at the Mansion House, and found Jonathan in the presence of the Lord Mayor, and also two persons who claimed him, the one a notary public, who produced a bill of sale from the original master to James Kerr, Esq., a Jamaica planter, who had refused to pay the purchase-money (thirty pounds) until the negro should be delivered on board a ship belonging to Messrs. Muir and Atkinson, bound to Jamaica, the captain of which vessel, Mr. David Lair, was the other person then attending to take him away.

The Lord Mayor having heard the claim, said, that "the lad had not stolen any thing, and was not guilty of any offence, and was therefore at liberty to go away;" whereupon the captain seized him by the arm, and told the Lord Mayor, he took him as the property of Mr. Kerr. Mr. Beech, the city coroner, now came behind Mr. Sharpe, and whispered in his ears the words "Charge him;" at which Mr. Sharpe turned upon the captain, and in an angry manner said, Sir, I charge you for an assault. On this, captain Lair quitted his hold of Jonathan's arm, and all came away,—Jonathan following Mr. Sharpe, and no one daring to touch him.

Mr. Sharpe was soon afterwards sued by the original master of the slave. His first step, in order to defend himself from the legal process instituted against him, was to apply to an eminent solicitor in the Lord Mayor's office, and to retain Sir James Eyre, then recorder of the city, and afterwards Lord Chief Justice of the Court of Common Pleas, as his counsel. After some consideration of the case, the solicitor brought him a copy of the opinion given in the year 1729, by the Attorney and Solicitor General, Yorke and Talbot, asserting that a slave coming from the West Indies to Great Britain or Ireland, does not become free, and assured him that they should not be able to defend him against the action, as the Lord Chief Justice Mansfield was also decidedly of the same opinion.

In this difficult task of legal inquiry, he had no instructor; no assistant, except his own diligence; no encourager except his own conscience; for it is remarkable that during his studies, he applied to the celebrated judge and commentator, Dr. Blackstone, but received little satisfaction from his opinion on the interesting subject in question. He consulted, likewise, several other professional men of eminence, but could find no one whose opinion was favourable to his undertaking. Even my own lawyers, he repeats, were against me; so much force had precedent, and the authority of those great names, Yorke and Talbot, to bias even the soundest judgment.

By continual application, before the final term when he was to answer the charge against his brother and himself, Granville had added to a thorough investigation of the English laws, much extraneous research into those of other nations; and he had compiled in manuscript a tract, "On the Injustice and dangerous tendency of tolerating Slavery, or even of admitting the least claim to private property in the Persons of Men in England." This tract, when completed, he submitted to the perusal of Dr. Blackstone; and then employed his utmost efforts to circulate it, by means of numerous copies, among those on whom he wished it to produce a favourable effect. The arguments contained in it were irresistible, and by its success he had the satisfaction of amply fulfilling his promise to his antagonist. The substance of this tract, he says, was handed about among the gentlemen of the law, in twenty or more different MS. copies, for nearly two years, until the lawyers employed against the negro, Jonathan Strong, were intimidated, and the plaintiff was compelled to pay costs for not bringing forward the action.

THE EDITOR'S LETTER BOX.

The papers on the Forms of Admission and Fees demanded of Attorneys; on Gavelkind; on Mortgage Covenants; and Costs; will probably appear next week.

We beg that our correspondents, in referring to cases, will take the trouble to look at the original reports; for in citing at second hand, there are, from misprints or otherwise, many instances of mistake, either in the names of the parties or the authorities.

We refer "*Adolescens*" to the first volume of our work, pp. 17, 33, 53, where he will find the best advice we can give for the study of the law.

During the sitting of Parliament, and the rapid introduction of new bills importantly affecting the state of the law, we shall endeavor to meet the wishes of numerous subscribers, by an occasional double number, in order to prevent the accumulation of arrears.

We are obliged to defer several Queries and Answers till next week.

Erratum.—P. 317, last line, for *Jones v. Jones*, read *Wyatt v. Cockerell*.

The Legal Observer.

Vol. V.

SATURDAY, MARCH 23, 1833.

No. CXXXI.

———"Quod magis ad Nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE LORD CHANCELLOR'S LAW AMENDMENT BILL.

THIS Bill is founded chiefly on the Second and Third Reports of the Common Law Commissioners. Its objects are as follow :

1. To authorize the Judges, or any eight of them, including the three Chiefs, to make alterations in the mode of pleading, in order to leave the questions to be tried by a jury less at large than they now are.

2. To enable executors to bring actions for injuries done *to* their testator, and to subject them to actions for injuries done *by* him.

3. To provide a remedy at law for one part owner against another, and for arbitrations between them.

4. To limit actions of debt to ten years, for rent, covenant, bond, debt, or recognizance; to two years for penalties; and six years in other cases; with exceptions as to infants, &c. and acknowledgments in writing within the time.

5. To abolish pleas of abatement for *non-joinder* of parties out of the jurisdiction of the Court; and for *misnomer* (which may be amended); and to permit defendants to be sued by the initials of their first names.

6. To abolish wager of law, and allow actions of debt on simple contract against executors.

7. To empower the Judges to make regulations for the admission of written documents. This part of the Bill renders unnecessary the clauses in Lord Wynford's former Bill, which were noticed at page 376.

8. To authorize the Superior Courts, or

one of the Judges, to direct issues to be tried before the sheriff of each county in cases of a limited amount, and which do not involve any difficult question of law or fact.

9. To provide for the payment of money into Court in all cases, except for assault, libel, crim. con., &c.

10. To try local actions in any county.

11. To provide for variances between writings produced in evidence and the record.

12. That special cases may be stated for the opinion of the Court, without proceeding to trial.

13. To render witnesses interested solely on account of the verdict, admissible.

14. To allow interest on debts and in trover, and on writs of error.

15. To subject executors to *costs*: to give costs on *nolle prosequi*; on *sci. fa.*; and of special juries in case of nonsuit.

16. To enable the Judges to make regulations for the taxing officers of each Court to tax costs of the other Courts, and to appoint some place for the business of taxation of all the Courts.

17. Executors to have power to distrain for arrears of rent.

18. To prevent the revocation of arbitrations; to compel the attendance of witnesses, and empower the arbitrators to administer oaths.

19. To extend the power of granting commissions to take affidavits in Scotland and Ireland.

20. To abolish Holidays, except Sundays, Christmas Day, and a few other days.

The great importance of this Bill, both in regard to various parts of the Law, and to the Practice of the Common Law Courts, induces us to print it *verbatim*. And we shall accompany the clauses with references to the Appendix of the Monthly Record (published September, 1831), which contains the *Third* Report of the Common Law Commissioners, and by such extracts as may be necessary from the *Second* Report, which we have not deemed it necessary to print at large, inasmuch as many of the recommendations it contained have been already adopted by the Legislature, and passed into laws. Amongst these, are the Acts of Interpleader, Speedy Judgment and Execution, Examination of Witnesses, Prohibition, and *Mandamus*.

The extracts which we shall now give from that Report, will explain the grounds on which a considerable part of the present Bill has been prepared, and enable our readers to judge of the expediency of the proposed alterations.

For the greater convenience of reference, we have numbered the sections, and shall distinguish the various parts of the Bill by the leading heads to which we have adverted in the preceding summary :

The Bill is intituled "An Act for the further Amendment of the Law, and the better Advancement of Justice;" and is as follows :

PLEADINGS.

1. *Judges to have power to make alterations in the mode of Pleading in the Superior Courts. Not to deprive any person of the power of pleading the General Issue given by any Statute.*

Whereas it would greatly contribute to the diminishing of expense in suits in the Superior Courts of Common Law at Westminster if the *Pleadings* therein were in some respects altered, and the questions to be tried by the jury left less at large than they now are according to the course and practice of pleading in several forms of action; but this cannot be conveniently done otherwise than by rules or orders of the Judges of the said Courts from time to time to be made, and doubts may arise as to the power of the said Judges to make such alterations without the authority of Parliament: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the Judges of the said Superior Courts, or any eight or more of them, of whom the Chiefs of each of the said Courts shall be three, shall and may, by any rule or order to be from time to time by them made, in term or vacation, at any time within five years from the time when this Act shall take effect, make

such alterations in the mode of pleading in the said Courts, and in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law, and such regulations as to the payment of costs, and otherwise for carrying into effect the said alterations, as to them may seem expedient; and any rule or order so made shall be binding and obligatory on the said Courts, and on all Courts of Error into which the judgments of the said Courts or any of them shall be carried by any writ of error, and be of the like force and effect as if the provisions contained therein had been expressly enacted by Parliament: Provided also, that no such rule or order shall have the effect of depriving any person of the power of pleading the general issue, and giving the special matter in evidence, in any case wherein he is now or hereafter shall be entitled to do so by virtue of any Act of Parliament now or hereafter to be in force^a.

^a This clause appears to be founded on the following remarks and suggestions in the *Second* Report of the Common Law Commissioners, pp. 31—35.

"Though by the modern practice no record of the pleading is in general drawn up until after issue joined or judgment signed, yet in theory or contemplation of law, every proceeding in the suit, from the appearance of the parties inclusive, is always supposed to be recorded by contemporaneous entry on the rolls of the Court; and the paper pleadings themselves, which are filed or delivered between the parties, purport (contrary to the true state of fact) to be extracts from such record. The effect of this is, that when the pleadings come to be drawn out in full form, that is, when they are made up into an issue or paper book, or transcribed into a record for trial, or ultimately entered on a judgment roll, they are in each case encumbered with the addition of certain formal entries then retrospectively made, of the different acts that have been done or are supposed to have been done in Court, and recorded, at every antecedent stage of the suit. These acts in Court have the general name of *continuances*, because their effect is to *continue* or carry on the history of the suit regularly from term to term, without *chasm* or interruption, as the ancient rigour of practice prescribed. The entries of them are of various kinds and appellations, according to the nature of the case; among the principal are the entry of continuance by *imparlance*, *curia advisari vult*, *vice comes non misit breve*, and *jurata ponitur in respectu*.

"It appears to us that there is no advantage or propriety in the legal supposition itself on which the whole of this practice is in a great measure founded; viz. that a record of the proceedings exists at a period earlier than that when it is in fact drawn up. It is productive too of unnecessary expense, by entitling the officers of the Court to fees for entries, in respect of which they have performed no real duty or service.

EXECUTORS.

2. *Executors to bring actions for injuries to the real estates of the deceased; and actions to be brought against executors for an injury to property, real or personal, by their testator.*

And whereas there is no remedy provided by law for injuries to the real estate of any person deceased, committed in his lifetime, nor for certain wrongs done by a person deceased in

his lifetime to another in respect of his property, real or personal; for remedy thereof be it enacted, that an action of trespass, or trespass on the case, as the case may be, may be maintained by the executors or administrators of any person deceased for any injury to the real estate of such person, committed in his lifetime, for which an action might have been maintained by such person, so as such injury shall have been committed within six

"We recommend, therefore, the introduction of a rule that the entry of the proceedings upon the record for trial, or on the judgment roll (according to the nature of the case) shall be taken to be, and shall be in fact, the first entry of the proceedings in the cause, or of any part thereof, upon record, and that no fees shall be payable in respect of any prior entry made or supposed to be made on any roll or record whatever.

"But whether such a provision be made or not, we think that it would at all events be desirable to abolish the formal entries of continuances. The acts in Court to which they refer, do not in fact take place, and their alleged occurrence is a mere fiction. It is a fiction too, without a valuable object, and serves merely to commemorate an antiquated system of practice. For the law has long ceased to require in reality that strict continuance of the suit from term to term, by previous sanction of the Court, which was considered (for reasons now difficult to trace), of such essential importance in the jurisprudence of the middle ages; and even as early as in the reign of King Henry 8. (32 Hen. 8. c. 30.), it was provided that no *miscontinuance* or *discontinuance* should, after verdict, have the effect of reversing the judgment; a provision since extended by the stat. Queen Anne (4 Anne c. 16.), to judgments upon confession *nihil dicit* and *non sum informatus*. The fiction, however, is not only useless but inconvenient, for notwithstanding these statutes, there are instances in which the want of a continuance on the record may be sufficient to defeat the proceedings, and the necessity of making such entries on the roll, and in the issue or paper book, is a source of frequent embarrassment and expense. It is of course our meaning, that the abolition of these forms should be without prejudice to any rules of practice as to the periods of proceeding in a suit; so that in any case where according to such rules it would be irregular to pass by a whole term without taking a step in the cause, such irregularity would still be a ground of objection. It is only the entry of the continuance that we would propose to set aside, and this because it has degenerated into an unmeaning form, serving rather to disguise than to illustrate the due course of practice, and productive of useless difficulty and expense. The change should also be without prejudice to the use of what are called *Pleas puis darreign continuance*; and in every case where such a plea would, but for that change, be allowable, it might still be pleaded in another form, substituting for the

allegation that the matter took place since the last *continuance*, an allegation that it took place since the time of the last *pleading*. Nor ought the disuse of continuances to dispense in any degree with the necessity of accurately entering upon the record when drawn up, the dates or times of each different pleading or proceeding in the cause. But we think that instead of dating them of the term generally, or in reference to some feast day in the term, they ought to be recorded as of the day, month, and year, when they actually took place, that method being more readily intelligible, and in other respects more convenient. The paper pleadings as filed or delivered between the parties, ought also to be entitled in the same manner.

"The practice of entering *warrants of attorney* to sue or defend (no warrant in writing being in fact given by the client) appears to rest on no better foundation, and to be attended with no more real advantage than that of entering continuances; we recommend, therefore, its abolition, it being contrary, in our judgment, to sound principle to retain in any case, a form unconnected with a substantial object, and productive of any expense or difficulty to the suitor. In connexion with this subject we may also remark, that the *filing* of warrants of attorney is an useless form, except in the instances of a warrant of attorney to confess judgment, or enter satisfaction on the record.

"Not only in the mode in which the pleadings are recorded, but in the style in which they are framed, there is much that is in the nature of mere formal entry, and the introduction of which tends needlessly to encumber and lengthen the allegations. Such is, in our opinion, in some instances the character of those *formal commencements and conclusions* appropriate to almost every pleading. It is not that the different formulæ to which we allude, are in any case without a substantial meaning, for they always serve to mark the character and tendency of the allegation; they afford a test, for example, whether it is in abatement or bar, whether in estoppel or not, and whether intended to apply to the whole, or to part of the demand. But we think that this useful object may be quite as well attained without the insertion of such of the formulæ as are of a familiar and ordinary kind. The general *actionem non*, *precludi non*, and *prayer of judgment* for the debt or damages, are the forms of incomparably the most frequent occurrence, and, as they indicate no peculiarity

calendar months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person; and the damages, when recovered, shall be part of the personal estate of such

in the pleading, may well be considered as superfluous. These therefore, we think, might with advantage be laid aside; it being at the same time declared, that whenever a plea or subsequent pleading on the part of the defendant, begins and ends without this commencement and conclusion, it shall be taken as pleaded in bar of the action generally; and when a replication or subsequent pleading on the part of the plaintiff so begins and ends, it is to be taken as in maintenance of the action generally. But in the rarer cases of pleadings to the jurisdiction, in abatement, in estoppel, in bar to the further maintenance, or in answer to part only, we would still retain the present commencements and conclusions, as tending usefully to mark the character of the pleading.

“The form of a *demurrer* and of a *joinder in demurrer*, might also be beneficially retrenched in the manner suggested in one of the regulations subjoined to this Report.

“The *recital of the writ* and allegation of the *custody of the marshal*, or of being *debtor to the King* at the beginning, and the allegation of *quo minus*, and production of *suit* and *pledges* at the end of the declaration, are now wholly useless and ought to be discontinued; and the same remark applies to the formal *defence* at the commencement of the plea. With respect to the recital of the writ and the allegation of the custody of the marshal, they would indeed be wholly improper, supposing the recommendation in our First Report to be carried into effect, as to the disuse of original writs and proceedings by bills.

“The constant reiteration of *time* and *place* in the pleadings, is another source of prolixity, and is farther objectionable as leading to the inference that the party is bound or prepared to prove the time when, and place where the fact happened, in conformity with his statement of them on the record; a supposition in most cases contrary to the truth; the general rule being that *time* and *place* need not be proved as laid. The same remarks apply to the allegations so frequently occurring, of *quantity*, *number*, *price*, *value* and *sums of money*. It has been suggested that a general rule might properly and beneficially be established, that in every case where by law it shall be unnecessary to prove such particulars according to the allegation thereof in the pleadings, it shall be unnecessary also to make the allegation. We see no objection to such a rule, and we recommend its adoption, as tending to abbreviate and improve the style of pleading. But the mention of the county in the margin of the declaration, should be excepted from its operation; as the insertion of it, serves the particular purpose of shewing in what county the plaintiff proposes to have the action tried.

person; and further, that an action of trespass, or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased for any wrong committed by him in his lifetime to

“Subjoined to this Report, will be found examples, illustrative of the different changes in the style of entry, and of pleading, above proposed.

“The formula, called a *Protestation* might be conveniently laid aside, supposing the rule to be established, that where a traversable fact is passed over without traverse, the right of denying it in another action, shall be always saved, without the aid of a protestation.

“The mode of denial in pleading, known by the name of a *Special* or *Formal Traverse*, though not now in frequent use, is still of occasional occurrence. It commences with matter of inducement introductory to the denial; and concludes with a verification; and differs in these respects from an ordinary traverse or denial, which has in general no inducement, and concludes with a tender of issue, that is (in most cases) concludes *to the country*. This method of special traverse appears to us to require reform. We do not recommend its total abolition, because the inducement is sometimes useful, as tending to point out more distinctly the meaning or extent of the denial, or as giving the adversary an opportunity of raising upon demurrer a question of law, which otherwise would have been involved in an issue in fact. But we can see no good reason why this sort of traverse should conclude with a verification; and as such a mode of conclusion is prolix and dilatory in its effect, by obliging the opposite party to repeat his original allegation, and tender issue on the traverse, instead of simply adding the *similiter*, we would suggest the expediency of a rule, that all special traverses should conclude with a tender of issue. The rule, however, should be accompanied with a proviso, that the opposite party is not to be precluded from pleading over to the inducement, where the traverse is immaterial.

“Besides the preceding suggestions on the subject of retrenchment in pleading, we shall have others to offer hereafter, at subsequent stages of our inquiry, more especially when we arrive at the consideration of the proceedings in *particular actions*. At present we shall content ourselves with recommending, in addition to these specific improvements, the adoption of some regulation of a general kind, tending to promote brevity and simplicity in the style of allegation, by throwing the expense of all unnecessary matter on the offending party. The most effectual plan for this purpose, would probably be to frame proper precedents, adapted to all cases of ordinary occurrence, to be promulgated by authority of the Courts, as the legitimate standards for the length of pleadings, according to which the taxation of the costs of pleading shall in every like instance be regulated.

“The multiplication of counts and pleas has long been considered as one of the chief abuses

another in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken

in the system of pleading. Though in other respects the prolixity of allegation once prevalent, has been materially retrenched, this particular kind of redundancy has never, perhaps, prevailed more remarkably than at the present day. Records containing from ten to fifteen special counts or pleas, are by no means rare, and fail to excite remark. Of these, the greater proportion, and frequently the whole, relate to the same substantial cause of action or defence. They are merely different expositions of the same case, and expositions of it often inconsistent with each other. The practice is productive of great and various inconveniences. One of the most obvious is its tendency to increase the expense of litigation. The length of a count or plea is very uncertain, but cannot be stated on an average at less than four law folios, and at that length, the addition of each count or plea is an addition of four shillings to the taxed costs on the draft. The increased expense is also to be taken into the account, which attends the making of copies to be kept and sent into the country, the making up of the issue, the paper books, the engrossments on parchment, and Court fees thereon, and the necessary increase in the length of the brief and the amount of fees to counsel. There are other consequences, however, of the practice, even more injurious, in our opinion, than its effects on the bill of costs. It often leads to such bulky and intricate combinations of statement, as to present the case to the Judge and jury in a form of considerable complexity; and is apt therefore, to embarrass and protract the trial, and occasionally leads to ultimate confusion and mistake in the administration of justice. The inconvenience last-mentioned is more particularly felt, when to a declaration consisting of various counts, the pleading happens to be *special*; for in that case the pleas also, like the counts to which they are pleaded, are often framed in various forms; and the intricacy of the whole record proportionably increased. The practice, therefore, of multiplying counts and pleas, presents one of the greatest obstacles to a more extended use of special pleading, a system, the great advantage of which, we shall have occasion in the course of this Report, to explain and enforce.

"The practice in question appears at first sight, no less strange than objectionable. To allow the plaintiff or defendant to state his case in ten or fifteen different ways, more especially if the statements be inconsistent, is a custom, the reasonableness of which is not readily perceived, which is peculiar perhaps to our own system of judicature, and which seems to have been unknown even in that system, at a former period. With respect to

upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person^b.

ACTIONS BY PART OWNERS.

3. *Part owners of ships to have an action at law against other part owners.*

And whereas great inconvenience has been found for want of a more summary and less expensive remedy than is now afforded to several part owners of ships or vessels in the recovery of their respective proportions of the earnings thereof, or in the recovery of contribution from other part owners thereof; for remedy whereof be it enacted, that any tenant in common or part owner of a ship or vessel may maintain an action of debt or *assumpsit* against any other tenant in common or part owner thereof, for his share of the profits or earnings of the same received by such other tenant in common or part owner, after deduction of the proper charges, expenses, and allowances, or for contribution towards any payment made by such first-mentioned tenant in common or part owner, on account of such ship or vessel, over and above the proportion which he himself ought to have paid^c.

4. *Power to refer the cause to arbitration.*

Provided, that it shall be lawful for the Court where such action shall be brought, or any Judge, if such Court or Judge shall think fit to do so, by any rule or order to order such action to be referred to an arbitrator to be named by the parties, or by such Court or Judge if the parties shall not name an arbitrator within a certain time to be fixed by such Court or Judge, and to give such directions, powers, and authorities to such arbitrator, touching the reference and award to be made, as to such Court or Judge may seem meet^d.

LIMITATION OF ACTIONS OF DEBT.

5. *Limitation of action of debt on specialties, &c.*

And be it further enacted, that all actions of

pleas, indeed, it is certain that the practice is not older than the 4 Anne c. 16. and though it has been of much longer duration with respect to counts, yet the precedents from the time of Queen Elizabeth to that of King William and Queen Mary, show that in the use of several counts, the pleader was at that period incomparably more sparing than at present; and the still existing rule which requires each count always to set forth a cause of action ostensibly different from the preceding (even when in fact the same) combines with other reasons in support of the opinion that at an antecedent era, one count only upon each cause of action, was allowed."

^b The grounds of this provision are stated in the Third Report, printed in the Appendix to the Monthly Record, p. viii.

^c *Vide* App. Monthly Record, p. v.

^d *Ib.*

debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debts or *scire facias* upon any recognizance, and also all actions of debt upon any award where the submission is not by specialty, or for any fine due in respect of any copyhold estates, or for an escape, or for money levied on any *fiery facias*, and all actions for penalties, damages, or sums of money given to the party grieved, by any statute now or hereafter to be in force, that shall be sued or brought at any time after the end of the present session of Parliament, shall be commenced and sued within the time and limitation hereinafter expressed, and not after; that is to say, the said actions of debt for rent upon an indenture of demise, or covenant or debt upon any bond or other specialty, actions of debt or *scire facias* upon recognizance, within five years after the end of this present session, or within *ten* years after the cause of such actions or suits, but not after; the said actions by the party grieved within one year after the end of this present session, or within *two* years after the cause of such actions or suits, but not after; and the said other actions within three years after the end of this present session, or within *six* years after the cause of such actions or suits, but not after; provided that nothing herein contained shall extend to any action given by any statute, where the time for bringing such action is by any statute specially limited^e.

6. Infants, *femes covert*, &c. excepted. Absence of defendants beyond seas provided for.

And be it further enacted, that if any person or persons that is or are or shall be entitled to any such action or suit, or to such *scire facias*, is or are, or shall be at the time of any such cause of action accrued, within the age of twenty-one years, *feme covert*, *non compos mentis*, or beyond the seas, then such person or persons shall be at liberty to bring the same actions so as they commence the same within such times after their coming to or being of full age, discover, of sound memory, or returned from beyond the seas, as other persons having no such impediment should, according to the provisions of this Act, have done; and that if any person or persons against whom there shall be any such cause of action is or are, or shall be at the time such cause of action accrued, beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the seas^f.

^g *proviso in case of acknowledgment in writing, or by part payment.*

Provided always, that if any acknowledg-

ment shall have been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, it shall and may be lawful for the person or persons entitled to such actions to bring his or their action for the money remaining unpaid and so acknowledged to be due within ten years after such acknowledgment by writing or part payment or part satisfaction as aforesaid, or in case the person or persons entitled to such action shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be, at the time of making the same, beyond the seas, then within ten years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond seas, as the case may be; and the plaintiff or plaintiffs in any such action, or any indenture, specialty or recognizance, may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of this statute^h.

8. The limitation after judgment or outlawry reversed.

And nevertheless be it enacted, if in any of the said actions judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill, or if in any of the said actions the defendant shall be outlawed, and shall after reverse the outlawry, that in all such cases the party plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not afterⁱ.

9. No part of the United Kingdom, &c. to be deemed beyond the seas, within the meaning of this act.

And be it further enacted, that no part of the United Kingdom of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any islands adjacent to any of them, being part of the dominions of his Majesty, shall be deemed to be beyond the seas within the meaning of this act, or of the act passed in the twenty-first year of the reign of King James the First, intituled, "An Act for Limitation of Actions, and for avoiding of Suits in Law^j."

PLEAS IN ABATEMENT.

10. No plea in abatement for nonjoinder of a

^e *Vide App. Monthly Record, pp. vii, viii.*
^f *Ibid.*

^g *Vide Appendix to Monthly Record, pp. vii. viii.*

^h *Ibid.*

ⁱ *Ibid.*

co-defendant to be allowed, unless he be resident within the jurisdiction.

And be it further enacted, that no plea in abatement for the nonjoinder of any person as a co-defendant shall be allowed in any court of common law, unless it shall be stated in such plea that such person is resident within the jurisdiction of the court, and unless the place of residence of such person shall be stated with convenient certainty in an affidavit verifying such plea ^k.

11. Plaintiff to plea in abatement of nonjoinder may reply a discharge by certificate, &c.

And be it further enacted, that to any plea in abatement in any court of law of the nonjoinder of another person, the plaintiff may reply that such person has been discharged by bankruptcy and certificate, or under an act for the relief of insolvent debtors ^l.

12. Provision in the case of subsequent proceedings against the persons named in a plea in abatement.

And be it further enacted, that in all cases in which after such plea in abatement the plaintiff shall, without having proceeded to trial upon an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the persons named in such plea in abatement as joint contractors, if it shall appear by the pleadings in such subsequent actions, or on the evidence at the trial thereof, that all the original defendants are liable, but that one or more of the persons named in such plea in abatement or any subsequent plea in abatement are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment, or to a verdict and judgment, as the case may be, against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same as costs in the cause against the defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person; provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement ^m.

13. Misnomer not to be pleaded in abatement.

And be it further enacted, that no plea in abatement for a misnomer shall be allowed in any personal action, but that in all cases in which a misnomer would but for this act have been by law pleadable in abatement in such actions, the defendant shall be at liberty to cause the declaration to be amended, at the

costs of the plaintiff, by inserting the right name, upon a Judge's summons founded on an affidavit of the right name; and in case such summons shall be discharged, the costs of such application shall be paid by the party applying, if the Judge shall think fit ⁿ.

14. Initials of names to be used in some cases.

And be it further enacted, that in all actions upon bills of exchange or promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters or some contraction of the christian or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the process or declaration, to designate such persons by the same initial letter or letters or contraction of the christian or first name or names, instead of stating the christian or first name or names in full ^o.

WAGER OF LAW.—EXECUTORS.

15. Wager of law to be abolished.

And be it further enacted, that no wager of law shall be hereafter allowed ^p.

16. Action of debt on simple contract to be maintainable against executors.

And be it further enacted, that an action of debt on simple contract shall be maintainable in any court of common law against any executor or administrator ^q.

ADMISSION OF DOCUMENTS.

17. Power to the Judges to make regulations as to the admission of written documents.

And whereas it is expedient to lessen the expense of the proof of written or printed documents, or copies thereof, on the trial of causes; be it further enacted, that it shall and may be lawful for the said Judges, or any such eight or more of them as aforesaid, at any time within five years after this act shall take effect, to make regulations by general rules or orders, from time to time, in term or in vacation, touching the voluntary admission, upon an application for that purpose at a reasonable time before the trial, of one party to the other, of all such written or printed documents or copies of documents as are intended to be offered in evidence on the said trial by the party requiring such admission, and touching the inspection thereof before such admission is made, and touching the costs which may be incurred by the proof of such documents or copies on the trial of the cause, in case of the omitting to apply for such admission, or the not producing of such documents or copies for the purpose of obtaining admission thereof, or of the refusal to make such admission, as the case may be, and as to the said Judges shall seem fit; and all such rules and orders shall be binding and obligatory and of the like force

^k Vide Appendix to Monthly Record, iv.

^l Ibid.

^m Ibid.

ⁿ Vide Appendix to Monthly Record, xi.

^o Ibid. xii.

^p Ibid. ix.

^q Ibid.

as if the provisions therein contained had been expressly enacted by Parliament^r.

WRITS OF INQUIRY.

18. *Writs of inquiry under the statute 8 & 9 W. 3, c. 11, to be executed before the sheriff, unless otherwise ordered.*

And whereas it would also lessen the expense of trials and prevent delay if such writs of in-

^r This clause is recommended in the Second Report, pp. 17—20.

"No expense is more uselessly incurred, nor is any attendance more vexatiously required, than those which in the great majority of cases are occasioned by the mode of proving written documents. Where nothing is admitted by the form of pleading, every matter in writing, whatever be its nature, must be proved by the oral testimony of some witness, who must be an attesting witness if there happen to be one, unless the document be thirty years old, or his presence be dispensed with upon grounds to be proved by some other witness or witnesses. The distance of the place of trial from the residences of the persons whose testimony is required, is often found greatly to augment their personal inconvenience and the costs of parties, both which are also frequently enhanced to an intolerable degree by a protracted attendance for several days until the time for trial of the cause arrives. Though every document may be known to both parties, and free from all suspicion, yet the personal attendance of every witness necessary to the establishment by strict proof of each of them, is indispensable, lest advantage should be taken of his absence to defeat the cause.

"Where title is to be made out, either by descent or conveyance, the copies of all parish registers and other originals of which copies are admissible, must be proved by the individuals who have examined them; and not only must instruments of modern date be established by the attesting witnesses, but ancient documents (though commonly said to prove themselves,) must be shewn by oral testimony to have been brought into court from the proper custody; and no letter or other similar paper can be read, unless some witness can speak to his personal knowledge of the hand-writing. These and other rules which require the best evidence, are fit to be observed where the genuineness of the document is doubtful; but are in most cases resorted to in practice for the purpose of obstructing rather than promoting the ends of justice. We are by no means disposed to recommend a relaxation of the rules themselves. Our object is to make it the interest of parties to dispense with them, when recourse to them is unnecessary. The greater part of the documents might in most instances be admitted without prejudice to the merits of the case on either side, if fair opportunity for inspection and inquiry previously to trial were given. Though the unsuccessful party be ultimately liable to the costs of his adversary's

inquiry as hereinafter mentioned were executed, and such issues as hereinafter mentioned were tried, before the sheriff of the county where the venue is laid; be it therefore enacted, that all writs issued under and by virtue of the statute passed in the session of parliament held in the eighth and ninth years of the reign of King William the Third, intituled "An Act for the better preventing frivolous and vexa-

proof, yet it is greatly for the interest of both parties that these costs should be reduced as far as possible, not only because the event of every cause is in some degree uncertain, but because the disbursement in the first instance is inconvenient, because the amount to be awarded in respect of the costs incurred must probably, under any system of taxation, be less than the actual advance, and because the ultimate payment by the opposite party is often very doubtful.

"These considerations, which at present generally fail to induce a party to propose admissions, lest he should disclose his case without attaining his object, would probably operate with considerable effect if any advantage was to be obtained by such proposal, sufficient to compensate for the inconvenience of disclosure, in case the admissions should be refused. The advantage proposed to be given is, that of subjecting the adversary to the costs of proving all such documents as have been offered to his inspection, and which he refuses to admit, whatever may be the event of the suit. The principle of this measure is partly borrowed from the well-known provision introduced within a few years into the bankrupt laws, by virtue of which certain matters of fact in actions brought by assignees of bankrupts are taken as admitted, unless notice be given by the defendant of an intention to dispute them, and the defendant is made liable to the costs of proving them, if established, though he succeed in the action.

"It would be very desirable that the principle of the measure should be extended in pleas of land and other actions in which general pleadings are allowed, to all such distinct facts as might, if special pleading were employed, be made the subjects of special allegation. We have bestowed much time in endeavouring to frame regulations applicable to facts of this description; and little difficulty would be experienced in doing this, if the facts to be proposed for admission were always such as lie within the knowledge of the party to whom the proposal is made. But in cases of contested title, this must very frequently be otherwise. To judge whether the matters proposed can safely be admitted, inquiry must often be instituted, and consequent expense incurred. And though no inquiry should be really necessary, it is to be feared that the proposal would, in many cases, be made a convenient pretext for additional charges, and the total costs of suit would be increased rather than diminished. On these grounds we have reluctantly confined our propositions to written

tious Suits," shall, unless the Court where such action is pending, or a Judge of one of the said Superior Courts, shall otherwise order, direct the sheriff of the county where the action shall be brought, to summon a jury to

appear before such sheriff, instead of the justices or justice of assize or nisi prius of that county, to inquire of the truth of the breaches suggested, and assess the damages that the plaintiff shall have sustained thereby, and shall

documents; though we cannot but feel that an unsuccessful party in a fair contest ought not to be burthened by his adversary with the costs of proving a long detail of facts which he has had no opportunity of admitting, and which he might have admitted on the record, if they had been specially pleaded. Should the regulations now suggested be found to operate as beneficially as we anticipate, we are not without hope that the principle of them may be found capable of further extension hereafter.

"It is therefore proposed, that notice may be given by either party to his adversary that the documents described in such notice, within a time and at a place therein mentioned, may be inspected, and that he will be required to admit that such as are specified in the notice as originals, were respectively signed or executed as they purport respectively to have been, that such as are specified as copies, are true copies, and that such documents as are stated in the notice to have been served, sent or delivered, were so served, sent or delivered, saving all just exceptions to the admissibility of all such documents as evidence in the cause; provided that the party on whom the notice is served, his attorney or agent, shall not have occasion in going and returning, to travel more than five miles for the purpose of such inspection; and that no costs of travelling shall be allowed on either side. It is not intended to exclude the expenses of sending the documents from one place to another, or of the attendance of an attorney or agent at the place of inspection; but the provision respecting travelling expenses has been deemed necessary to prevent the proceeding from being used as a pretence for unnecessary journeys.

"It is proposed that the copies produced for inspection shall be marked as copies, and a description of the originals written thereon, and when, by whom, and how (if at all) such originals have been served, sent or delivered.

"That the adverse party may examine and take copies of all the documents produced for inspection, and may require the copies of all such documents of which the originals are not produced, or are not in his own possession, to be verified by affidavit.

"That if the adverse party shall not at the time appointed for inspection, or within a reasonable time afterwards (regard being had to the nature of the inquiries, if any, to be made), consent to the required admissions by indorsement on the notice, or a duplicate thereof, he may be required by summons to attend before a Judge for the purpose of making such admissions, at a time therein appointed; when the documents being produced and marked as exhibited, and proved by affidavit to be in the same state as when inspected or left for inspection, such as are agreed to be admitted,

shall be distinguished accordingly by the word "admitted," written in the hand of the Judge, with his signature thereto; and such as are not admitted, shall be distinguished by the signature of the Judge subscribed to the memorandum of exhibition.

"Provided that the Judge may impose any reasonable terms upon the party requiring the admissions, or may dismiss the summons if he think it just and reasonable so to do; that he may also make any order with respect to costs incident to such proceedings; but that in the absence of such order the same shall be costs in the cause; and that the order of the Judge shall be final.

"That such documents as shall be marked by the word "admitted," shall, on being produced at the trial or inquiry, be deemed to be sufficiently proved as originals or copies, and to have been sent, served or delivered, according as the same shall respectively appear to be marked, without evidence of the hand-writing of the Judge.

"And that when any such documents shall have been marked as exhibited, and shall be proved at the trial or inquiry, the proof thereof shall be certified by the Judge or presiding officer, and the costs of proving the same shall be taxed against the party from whom the admission was required, whatever may be the event of the cause.

"It may be material to remark, that these regulations will not have the effect of making any document evidence in the cause, which would not be admissible if proved in the ordinary way.

"It is also to be observed, that the measure above described does not compel either the plaintiff or defendant to disclose his case before trial. Nor do we think it expedient to recommend a provision by which any one should be absolutely prohibited from offering documents in evidence, which he has not disclosed, and least of all, a party who has only to maintain the defensive. To exclude the admission of all documentary evidence of which previous notice has not been given, might frequently be highly inconvenient, and sometimes prejudicial to the establishment of truth. It appears to us, however, that in general the ends of justice would be greatly promoted if parties upon whom it is incumbent to maintain the affirmative of any issues, were excluded from any right to the costs of proving documents of which notice had not been given to the adverse party, and an opportunity afforded to him of admitting them before trial. A regulation to this effect would extend to plaintiffs in all actions in which a general form of declaration is allowed, and would principally operate in pleas of land, in which it is equally desirable that he who seeks to disturb the possession of another

command the said sheriff to make return thereof to the said Court from whence the same shall issue at a day certain, in term or in vacation, in such writ to be mentioned; and such proceedings shall be had after the return of such writ as are in the said statute in that behalf mentioned, in like manner as if such writ had been executed before a justice of assize or nisi prius.

ISSUES FOR SMALL DEBTS BEFORE THE SHERIFF.

19. *Power to direct issues joined in certain actions to be tried before the sheriff.*

And be it further enacted, that in any action depending in any of the said Superior Courts, it shall be lawful for the Court in which such suit shall be depending, or any Judge of any of the said Courts, if such Court or Judge shall be satisfied that the debt or damages to be recovered shall not exceed and that the trial will not involve any difficult question of fact or law, and such Court or Judge shall think fit so to do, to order and direct that the issue or issues joined shall be tried before the sheriff of the county where the action is brought, and for that purpose a writ shall issue directed to such sheriff, commanding him to try such issue or issues by a jury to be summoned by him, and to return such writ, with the finding of the jury thereon indorsed, at a day certain, in term or in vacation, to be named in such writ; and thereupon such sheriff shall summon a jury, and shall proceed to try such issue or issues.

20. *Upon the return of writ of inquiry or trial of issues, judgment to be signed, &c. unless, &c. Sheriff as to such issues to have the like powers as Judges at Nisi Prius.*

And be it further enacted, that at the return of any such writ of inquiry, or writ for the trial of such issue or issues as aforesaid, costs shall be taxed, judgment signed, and execution issued forthwith, unless the sheriff or other officer before whom such writ of inquiry may be executed or such trial had, shall certify un-

should be induced to communicate the grounds of his claim, and that the party in possession should retain his present advantage of not being compelled to disclose his own title until an apparent right to dispossess him has been established by his adversary.

"We have accordingly framed a regulation upon this principle.

"As the effect of it will be to confer a benefit on the party to whom the notice is given, by enabling him to save himself from the risk of costs, if willing to make an admission, we see no objection to allowing the notice to be served at a late period before trial. The party giving the notice will be excluded from all costs of proof incurred previously to service of the notice: it will, therefore, generally be his interest to serve it reasonably early.

^r App. Monthly Record, xxxviii.

der his hand upon such writ that judgment ought not to be signed until the defendant shall have had an opportunity to apply to the Court for a new inquiry or trial, or a Judge of any of the said Courts shall think fit to order that judgment or execution shall be stayed till a day to be named in such order; and the verdict of such jury on the trial of such issue or issues shall be as valid and of the like force as a verdict of a jury at nisi prius; and the sheriff or other officer presiding at the trial of such issue shall have the like powers with respect to such trial as are hereinafter given to Judges at nisi prius, and the like powers of certifying as to costs and otherwise as a Judge at nisi prius now has by law.

21. *1 W. 4. c. 7. to extend to such writs of inquiry and issues.*

Provided also, that all and every the provisions contained in the statute made and passed in the first year of the reign of his present Majesty, intituled "An Act for the more speedy Judgment and Execution in Actions brought in His Majesty's Courts of Law at Westminster, and in the Court of Common Pleas of the County Palatine of Lancaster, and for amending the Law as to Judgment on a *Cognovit actionem* in Cases of Bankruptcy," shall, so far as the same are applicable thereto, be extended and applied to judgments and executions upon such writs of enquiry and writs for the trials of issues in like manner as if the same were expressly re-enacted herein.

22. *Sheriffs to name deputies to be resident in London.*

And be it further enacted, that from and after the day of next, each sheriff of a county in England or Wales shall severally name a sufficient deputy, who shall be resident or have an office within one mile from the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting of all rules and orders to be made on or touching the execution of any process or writ to be directed to such sheriff.

PAYING MONEY INTO COURT.

23. *Defendant to be allowed to pay money into Court in certain actions by Judge's order.*

And be it further enacted, that it shall be lawful for the defendant in all personal actions, (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation or debauching of the plaintiff's daughter or servant,) by leave of any of the said Superior Courts where such action is pending, or a Judge of any of the said Superior Courts, to pay into Court a sum of money by way of compensation or amends, in such manner and under such regulations as to the payment of costs and the form of pleading as the said Judges, or such eight or more of them as aforesaid,

shall, by any rules or orders by them to be from time to time made, order and direct ^t.

VENUE.

24. *Power to direct local actions to be tried in any county.*

And whereas unnecessary delay and expense is sometimes occasioned by the trial of

local actions in the county where the cause of action has arisen; be it therefore enacted, that in any action depending in any of the said Superior Courts, the venue in which is by law local, the Court in which such action shall be depending, or any Judge of any of the said Courts, may, on the application of either party, order the issue to be tried, or writ of inquiry

^t This clause is supported by the Second Report, pp. 52—55.

“As the law at present stands, wherever a person admits that he is indebted to another to some extent, but disputes the amount claimed, he is at liberty to tender to the latter, before any action is commenced, the sum which he allows to be due, and by this tender to throw upon his adversary the burthen of proving that more is due, at the risk of costs in case of failure; or the defendant, after an action is commenced, and after the plaintiff has declared, may pay into Court the sum which he admits to be due, with costs up to that time, and by this payment may throw the risk of further costs upon the plaintiff. But the privilege in both instances is in general confined to debts strictly so called, and does not extend to cases where damages, uncertain in their nature, are sought to be recovered, whether those damages arise from a breach of contract or from a wrong done. Acts of Parliament, indeed, exist in favour of magistrates and other officers, which give the power of tendering amends or paying money into Court, and the like power of tendering amends is given in case of involuntary trespasses to land, by stat. 21 Jac. 1. c. 16. § 5; but these are exceptions to the general rule.

“It has been suggested to us from several quarters, that this privilege ought to be much extended; and some persons are of opinion that it ought to be allowed in all actions whatsoever. The general principle seems to be quite correct, that where a man admits himself to be in the wrong, he should be enabled to make reparation at as little expense to himself as possible, provided that such reparation to the injured party be ample. By the law of England that reparation is in most cases made by a sum of money assessed by a jury, and even in those cases in which the thing itself in dispute is recovered, as in *quare impedit*, dower, actions for recovery of lands, and, perhaps, detinue, reparation for detention and damage, is made by a sum of money. This reparation is all that the injured party can receive, and is in general an adequate compensation, where the wrong done affects only his property, real or personal. We think, therefore, that wherever the wrong done is of that description, a tender or payment of money into Court should be allowed. Cases, indeed, occur of wilful and malicious injuries to property, in which the defendant is not entitled to any protection; but as it cannot be ascertained in the commencement of a suit, whether the wrong complained of be wilful or malicious, a

point which it is the province of a jury to determine, we do not think it possible in extending the privilege of tender and payment of money into Court, to limit it generally to cases where the conduct of the defendant is not wilful or malicious. Some cases, however, which affect the person, character, reputation or domestic comfort of individuals, are of such a nature that the injuries complained of are necessarily wilful or malicious. In these the defendant, if guilty at all, is obviously guilty of a moral as well as a legal wrong, and insult is often added to injury. The actual damage sustained is not in such cases a fair measure of the compensation to which the plaintiff is entitled; neither is it just that the law should afford any protection to the defendant, or allow him the privilege of estimating that compensation himself at the risk of his adversary. It is contrary to every principle of justice, that a man should beat or imprison or libel another, or seduce his wife or daughter, and then be allowed to offer him 100*l.* or any other sum, with a threat, that if it be not accepted, he may try what a jury will give at the peril of costs. Not to mention that such a privilege, if given to the wrong doer in the cases specified, would tend to induce the injured party to take other means of satisfaction, rather than appeal to the proper tribunal for redress of his grievances. We do not propose, therefore, to extend the liberty of tender or payment of money into Court, to actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, or for criminal conversation or seduction. In these cases, we think, that the plaintiff is entitled to a public vindication of his character, and to reparation for the outrage done to his person or feelings or domestic comforts, to be estimated by a jury, at the inevitable costs of the defendant. If, indeed, the action be of a frivolous description, as many such actions are, the jury will do justice between the parties by giving very small damages, and it is very fit, that if the damages given be not above a fixed sum, the plaintiff should have no costs. We shall have occasion to consider hereafter, when we come to the subject of costs, whether the sum of 40*s.* at present limited by the statute 22 & 23 Charles 2. c. 2, in cases of trespass to land and assault, be the proper sum, and whether the provisions of that Act or any similar provisions should be extended to other actions.

“Actions of trespass to lands, and actions on the case are frequently brought for an act done purposely to try some right, in which instances the practice of payment of money into

to be executed, in any other county or place than that in which the venue is laid; and for that purpose any such Court or Judge may or-

Court is not likely to be applied; but we do not think it necessary to except such cases, for if the defendant should find that he cannot support the right, there is no reason why he should not abandon it and pay damages, nominal or real, into Court. Neither do we think it necessary to except actions of detinue, trover, or trespass, for taking away goods, but rather to provide that a tender before action brought of the goods themselves, with a sum of money for damages, or of a sum of money only, if the goods were no longer in the defendant's power, may be pleaded in bar; and that after action brought, the defendant may pay money into Court, or apply to a Judge for liberty to restore the goods, under certain regulations which will be found annexed. The latter is a course of practice already in some measure established.

"In cases of injuries to the person, arising from negligence, unskilfulness, or accident, not less than those of injuries to property, we consider the amount of reparation to be fair matter of dispute at the peril of costs on either side.

"It appears to us, that the liberty of tendering money before action brought, and of paying money into Court afterwards, should be co-extensive. If the defendant be allowed to offer reparation in money at any time, he certainly ought to be at liberty to do so at the earliest period. Neither the plaintiff nor the defendant can derive any advantage from confining the liberty to a period when an action has already been brought and expenses incurred. We also think, that whenever a defendant is by statute allowed to tender amends he ought to be allowed after action brought, to pay money into Court.

"In actions on bonds for securing the payment of a sum of money, the defendant is allowed by the statute 4 Anne, c. 16. § 12, to plead *payment* of the sum secured, after the day specified in the condition, and we see no reason why he should not be allowed to plead a *tender* of that sum before action, or to pay it into Court. There is equally a forfeiture of the bond in all the cases, but the plaintiff is offered all to which he is ultimately entitled. In actions on bonds or other penal sums for securing the performance of agreements which have been broken, if it appear that future breaches may occur, the plaintiff is entitled to judgment for the penalty as a security against such future breaches; in these cases, therefore, we propose that the defendant should be at liberty to plead a tender in bar of damages for the breach or breaches on which the action is brought, but not in bar of the action generally; or to pay money into Court on such breach or breaches; but that where no future breach can occur, he may plead a tender in bar of the action, or pay money into Court generally. The mode in which this should be done

der a suggestion to be entered on the record, that the trial may be more conveniently had, or writ of inquiry executed, in the county or

will be found in the Regulations annexed to this Report.

"It has been suggested to us, that a plea of tender or payment of money into Court ought not to operate as an admission by the defendant of the cause of action alleged. But it seems to us that it ought to have that effect, and that a different rule would be open to the objection of inconsistency.

"A method has occurred to us by which even in cases where a defendant is not disposed to admit that the plaintiff is entitled to any thing, (having a defence on which he relies as to the whole action) the principle of payment of money into Court may be made applicable. We propose that, in such cases, a defendant may be allowed, after pleading his matter of defence, to give notice, that in the event of his failing in his defence, he proposes that the damages sustained by the plaintiff shall be assessed at the trial (without proof) at a sum to be specified in the notice; and that on such notice, unless the plaintiff shall signify his consent that the damages shall be assessed at that sum, he shall be liable (whatever be the result of the trial) to the costs attendant upon the proof of the damages, unless the verdict shall exceed the sum so proposed by the defendant. Thus as by payment of money into Court, the defendant is enabled to save the costs of all further proceedings in the cause, so by this method he will be enabled to save the costs of proving all damages the amount of which he is prepared to admit. Nothing is more common upon trials at *nisi prius* than to hear the Judge and the counsel suggest, at the very outset of a cause, that the right only shall be tried and the damages settled out of Court: but this is done after the expense of bringing the witnesses to the trial has been incurred, all which is thrown away, and the same expense incurred over again in attending before some arbitrator. The method proposed will be highly beneficial, as it will tend to produce an assessment by consent pursuant to the defendant's notice, and will thereby not only save expense to both parties, but also the time of the public, which is now often needlessly occupied at the trial, in the mere assessment of damages. Such a method will, likewise, add much to the efficacy of our proposed plan of special pleading, in lieu of the general issue; for where the assessment of damages is by consent, it will leave nothing to be discussed at the trial, but the single question on which the issue is taken.

"By the present practice, when money is paid into Court, a rule of Court for that purpose is obtained, and the sum paid in is considered as struck out: by the pleadings, however, the whole of the plaintiff's case is denied, in the same manner as if no such payment were made. The denial so pleaded is intended to operate only as a denial of the rest of the case, and the plea used, is the general issue, in ac-

place where the same is ordered to take place^u.

VARIANCES.

25. *Extending 9 G. 4. c. 15, to all variances.*

And whereas great expense is often incurred, and delay or failure of justice takes place, at trials, by reason of variances as to some particular or particulars between the proof and the recital or setting forth, on the record or document on which the trial is had, of contracts, customs, prescriptions, names, and other matters or circumstances not material to the merits of the case, and by the mis-statement of which the opposite party cannot have been prejudiced; and the same cannot in any case be amended at the trial, except where the variance is between writings produced in evidence and the record: And whereas it is expedient to allow such amendments as hereinafter mentioned to be made on the trial of the cause; be it therefore enacted, that it shall be lawful for any Court of Record, holding plea in civil actions, and any Judge sitting at nisi prius, if such Court or Judge shall see fit so to do, to cause the record, writ, or document on which any trial may be pending before any such Court or Judge, in any civil action, or in any information in the nature of a *quo warranto*, or proceedings on a *mandamus*, when any variance shall appear between the proof and the recital or setting forth, on the record, writ, or document on which the trial is proceeding, of any contract, custom, prescription, name, or other matter, in any particular or particulars in the judgment of such Court or Judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution, or defence, to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, or postponing the trial to be had before the same or another jury, or both payment of

tions of assumpsit and debt on simple contract, and of payment or accord and satisfaction, in debt or covenant on specialties. We have thought it much more convenient, as well as more consistent with the real state of facts, that payment of money into Court should be put into the shape of a plea; and have framed one accordingly, which will be found among the forms annexed to this report. Other advantages are gained by putting it into the shape of a plea, namely, that the expense of a rule of Court, and of proving such rule at the trial, is avoided; and that a specific issue will arise as to the sufficiency of the sum; and that the admission of the plaintiff's right of action and the extent of that admission, will appear on the record; a circumstance which will be found peculiarly beneficial in actions of trespass to land."

^u *Vide App. Monthly Record, p. vi.*

costs and postponement, as such Court or Judge shall think reasonable; and in case such variance shall be in some particular or particulars in the judgment of such Court or Judge not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution, or defence, then such Court or Judge shall have power to cause the same to be amended upon payment of costs to the other party, and withdrawing the record or postponing the trial as aforesaid, as such Court or Judge shall think reasonable; and after any such amendment the trial shall proceed, in case the same shall be proceeded with, in the same manner in all respects, both with reference to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance had appeared; and in case such trial shall be had at nisi prius or by virtue of such writ as aforesaid, the order for the amendment shall be indorsed on the postea or the writ, as the case may be, and returned together with the record or writ, and thereupon such papers, rolls, and other records of the Court from which such record or writ issued, as it may be necessary to amend, shall be amended accordingly; and in case the trial shall be had in any Court of Record, then the order for amendment shall be entered on the roll or other document upon which the trial shall be had; provided that it shall be lawful for any party who is dissatisfied with the decision of such Judge at nisi prius, sheriff, or other officer, respecting his allowance of any such amendment, to apply to the Court from which such record or writ issued for a new trial upon that ground, and in case any such Court shall think such amendment improper, a new trial shall be granted accordingly, on such terms as the Court shall think fit, or the Court shall make such other order as to them may seem meet^v.

26. *Power for the Court or Judge to direct the Facts to be found specially.*

And be it further enacted, that the said Court or Judge shall and may, if they or he think fit, in all such cases of variance, instead of causing the record or document to be amended as aforesaid, direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on such record or document, and, notwithstanding the finding on the issue joined, the said Court or the Court from which the record has issued shall, if they shall think the said variance immaterial to the merits of the case, and the mis-statement such as could not have prejudiced the opposite party in the conduct of the action or defence, give judgment according to the very right and justice of the case^w.

^v This provision is elaborately explained in the Second Report, p. 35—44, to which we shall advert in the next Number.

^w *Ibid.*

SPECIAL CASES.

27. *Power to state a special case without proceeding to trial.*

And be it further enacted, that it shall be lawful for the parties in any action, after issue joined, by consent and by order of any of the judges of the said Superior Courts, to state the facts of the case, in the form of a special case, for the opinion of the Court, and to agree that a judgment shall be entered for the plaintiff or defendant, by confession or of *nolle prosequi*, immediately after the decision of the case, or otherwise as the Court may think fit; and judgment shall be entered accordingly.

ADMISSIBILITY OF WITNESSES.

28. *Witnesses interested solely on account of the verdict to be admissible.*

And in order to render the rejection of witnesses on the ground of interest less frequent, be it further enacted, that if any witness shall be objected to as incompetent, on the ground that the verdict or judgment in the action on which he shall be proposed to be examined would be admissible in evidence for or against him, such witness shall nevertheless be examined, but in that case a verdict or judgment in that action in favor of the party on whose behalf he shall have been examined shall not be admissible in evidence for him, or any one claiming under him, nor shall a verdict or judgment against a party on whose behalf he shall have been examined be admissible in evidence against him or any one claiming under him.

29. *Direction to indorse the name of the witness on the record.*

And be it further enacted, that the name of every witness objected to as incompetent on the ground that such verdict would be admissible in evidence for or against him shall at the trial be indorsed on the record or document on which the trial shall be had, together with the name of the party on whose behalf he was examined, by some officer of the Court, at the request of either party, and shall be afterwards entered on the record of the judgment; and such indorsement or entry shall be sufficient evidence that such witness was examined in any subsequent proceeding in which the verdict or judgment shall be offered in evidence.

ALLOWANCE OF INTEREST.

30. *Jury empowered to allow interest upon debts.*

And be it further enacted, that upon all debts or sums certain, payable at a certain time or otherwise, the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise than from the time of demand of payment in writing, as the case may be; provided that

interest shall be payable in all cases in which it is now payable by law.

31. *In actions of trover or trespass for goods, and on policies of insurance, the jury may give interest by way of damages.*

And be it further enacted, that the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance.

32. *Interest to be allowed on all writs of error for the time that execution has been delayed.*

And be it further enacted, that if any person shall sue out any writ of error upon any judgment whatsoever given in any Court in any action personal, and the Court of Error shall give judgment for the defendant thereon, then interest shall be allowed by the Court of Error for such time as execution has been delayed by such writ of error for the delaying thereof.

EXECUTORS.—COSTS.

33. *Executors suing in right of the testator to pay costs.*

And be it further enacted, that in every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the Court in which such action is brought, or a Judge of any of the said superior Courts, shall otherwise order, be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against the plaintiff, and in all other cases in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself; and the defendant shall have judgment for such costs, and they shall be recovered in like manner^x.

COSTS OF NOLLE PROSEQUI, &c.

34. *One or more of several defendants in any action having a verdict to have costs.*

And be it further enacted, that where several persons shall be made defendants in any personal action, and any one or more of them shall have a *nolle prosequi* entered as to him or them, or upon the trial of such action shall have a verdict pass for him or them, every such person shall have judgment for and recover his reasonable costs, unless, in the case of a trial, the judge before whom such cause shall be tried shall certify upon the record, under his hand, that there was a reasonable cause for making such person a defendant in such action.

35. *Costs allowed on nolle prosequi, as to part of declaration.*

And be it further enacted, that where any *nolle prosequi* shall have been entered upon any

^x See App. Monthly Record, p. xxxvi.

count, or as to part of any declaration, the defendant shall be entitled to, and have judgment for, and recover his reasonable costs in that behalf.

COSTS ON SCI. FA. AND DEMURRER.

36. *Plaintiff in scire facias, and plaintiff or defendant on demurrer, in all cases to have costs.*

And be it further enacted, that in all writs of *scire facias* the plaintiff obtaining judgment on an award of execution shall recover his costs of suit upon a judgment by default as well as upon a judgment after plea pleaded or demurrer joined; and that where judgment shall be given either for or against a plaintiff or demandant, or for or against a defendant or tenant, upon any demurrer joined in any action whatever, the party in whose favour such judgment shall be given shall also have judgment to recover his costs in that behalf.

COSTS OF SPECIAL JURIES.

37. *Costs of special juries in case of a nonsuit.*
6 G. 4. c. 50.

And whereas it is provided in and by a statute passed in the sixth year of the reign of his late Majesty, intituled, "An Act for consolidating and amending the Law relative to Jurors and Juries," that the person or party who shall apply for a special jury shall pay the fees for striking such jury, and all the expenses occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury, unless the Judge before whom the cause is tried shall, immediately after the verdict, certify under his hand, upon the back of the record, that the same was a cause proper to be tried by a special jury: and whereas the said provision does not apply to cases in which the plaintiff has been nonsuited; and it is expedient that the Judge should have such power of certifying as well when a plaintiff is nonsuited as when he has a verdict against him; be it therefore enacted, that the said provision of the said last mentioned act of parliament, and every thing therein contained, shall apply to cases in which the plaintiff shall be nonsuited as well as to cases in which a verdict shall pass against him.

TAXING OFFICERS.

38. *Power to make regulations as to the officers of each Court at Westminster taxing costs.*

And whereas it would tend to the better dispatch of business, and would be more convenient, and better assimilate the practice and promote uniformity in the allowance of costs, if the officers on the plea side of the Courts of King's Bench and Exchequer, and the officers of the Court of Common Pleas at Westminster, who now perform the duties of taxing costs,

7 The Commissioners recommend the abolition of special jury fees. See App. Monthly Record, xxxix.

were to be empowered to tax costs which have arisen or may arise in each of the said Courts indiscriminately; be it therefore enacted, that it shall and may be lawful for the Judges of the said Courts, or such eight or more of them as aforesaid, by any rule or order to be from time to time made, in term or vacation, to make such regulations for the taxation of costs by any of the said officers of the said Courts indiscriminately as to them may seem expedient, although such costs may not have arisen in respect of business done in the Court to which such officer belongs, and to appoint some convenient place in which the business of taxation shall be transacted for all the said Courts, and to alter the same when and as it may seem to them expedient.

EXECUTORS.

39. *Executors of lessor for term of years to have power to distrain for arrears in the lifetime of testator.*

And be it further enacted, that it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.

40. *Arrears may be distrained for within six months after determination of term.*

And be it further enacted, that such arrearages may be distrained for after the end or determination of such term or lease, at will, in the same manner as if such term or lease had not been ended or determined: Provided that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due: Provided also, that all and every the powers and provisions in the several statutes made relating to distresses for rent shall be applicable to the distresses so made as aforesaid.

ARBITRATION.

41. *Submission to arbitration by rule of Court, &c., not to be revocable.*

And whereas it is expedient to render references to arbitration more effectual; be it further enacted, that the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of Court, or Judge's order, or order of *nisi prius*, or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of his Majesty's Courts of Record, shall not be revocable by any party to such reference without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a Judge; and the arbitrator or umpire shall and may and is hereby required to proceed with the reference notwithstanding any such revocation, and to make his award, if the per-

son making such revocation shall not afterwards attend the reference ^z.

42. Power to compel the attendance of witnesses.

And be it further enacted, that when any reference shall have been made by any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the Court by which such rule or order shall be made, or which shall be mentioned in such agreement, or for any Judge, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order; and the disobedience to any such rule or order shall be deemed a contempt of Court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, shall also be served either together with or after the service of such rule or order: provided always, that every person whose attendance shall be so

^z Compulsory arbitration is recommended in the Second Report, p. 25. The passages in support of this clause are at p. 27.

"With a view to encourage voluntary submissions to arbitration, and to render the proceeding by arbitration in all cases a more efficient remedy, we think it further advisable, that whenever a reference has been made by rule of Court or order of a Judge, or any submission of parties has been made a rule of Court, the attendance of witnesses before the arbitrator should be enforced by subpoena, to be issued out of the Court mentioned in such rule or order; that false testimony given before the arbitrator should be subject to the penalties of perjury; that the Judges should be empowered, upon the application of the successful parties, to order that awards may be entered among the judgments of such Courts, and that execution may be issued thereon.

"It is obvious, that when a reference has been ordered without consent, the benefit of a judgment and execution, which might have been obtained in the action, ought not to be lost; and if a provision upon this subject is to be made in respect to references of one kind, it is convenient that it should be extended to all.

"To authorize the successful party to enter up judgment as upon verdict or confession, may perhaps occur as a more obvious expedient for the purpose; but we think such a course objectionable as founded on a fiction, and we prefer the method above recommended, of entering the award itself, as matter of record, on which execution may issue.

"We think, that submissions to arbitration by rule of Court or order of a Judge, or by agreement of parties subsequently made a rule of Court, should be irrevocable, unless by consent of the Court or a Judge."

required shall be entitled to the like conduct money, and payment of expenses and for loss of time, as for and upon attendance at any trial: provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial^a.

43. Power of the arbitrators under a rule of court to administer an oath.

And be it further enacted, that when in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrator or umpire, or any one arbitrator, and he or they are hereby authorized and required, to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

COMMISSIONS TO TAKE AFFIDAVITS.

44. To extend the power of granting commissions to take affidavits to Scotland and Ireland.

And whereas it would be convenient if the power of the Superior Courts of Common Law and Equity at Westminster to grant commissions for taking affidavits to be used in the said Courts respectively should be extended; be it further enacted by the authority aforesaid, that the Lord High Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, and Judges of the said Courts of Law, shall have such and the same powers for granting commissions for taking and receiving affidavits in Scotland and Ireland to be used and read in the said Courts respectively as they now have in all and every the shires and counties within the kingdom of England, and dominion of Wales, and town of Berwick-upon-Tweed, and in the Isle of Man, by virtue of the statutes now in force; and that all and every person and persons wilfully swearing or affirming falsely in any affidavit to be made before any person or persons who shall be so empowered to take affidavits under the authority aforesaid, shall be deemed guilty of perjury, and shall incur and be liable to the same pains and penalties as if such person had wilfully sworn or affirmed falsely in the open Court in which such affidavit shall be entitled, and be liable to be prosecuted for such perjury in any Court of competent jurisdiction in that part of the united kingdom in which such offence shall have been committed, or in that part of the united kingdom in which such person shall be apprehended on such a charge.

HOLIDAYS.

45. For the abolition of certain holidays.
And whereas the observance of holidays in

^a *Ibid.*

the said Courts of Common Law during term time, and in the offices belonging to the same, on the several days on which holidays are now kept, is very inconvenient, and tends to delay in the administration of justice; be it therefore enacted by the authority aforesaid, that none of the several days mentioned in the statute passed in the sessions of Parliament holden in the fifth and sixth years of the reign of King Edward the Sixth, intituled "An Act for the keeping Holidays and Fasting Days," shall be observed or kept in the said Courts, or in the several offices belonging thereto, except Sundays, the day of the Nativity of our Lord, and the three following days, and Monday and Tuesday in Easter Week.

46. Commencement of Act.

And be it further enacted, that this Statute shall commence and take effect on the Day of

47. Not to extend to Ireland or Scotland.

And be it further enacted, that nothing in this Act shall extend to that part of the United Kingdom called Ireland, or that part of the United Kingdom called Scotland.

ANALYSIS OF A BILL TO CONSOLIDATE AND AMEND THE LAWS RELATING TO HIGHWAYS.

THE Bill recites, that it is expedient to amend the Laws relating to Highways in England, and to consolidate the same in one Act, and make other provisions.

It is then proposed to repeal the several existing Acts, and, in their stead, to enact as follows:

1. Not to revive repealed Acts.
2. Proviso for recovery of penalties incurred for offences against acts repealed.
3. Present surveyors to continue until waywarden appointed.
4. Waywarden to be elected annually, on the 25th March; and he may be re-elected.
5. Qualification of waywarden: residence within five miles, and having 10*l.* a year freehold, or 100*l.* personal estate.
6. Manner of filling up vacancy in case of death, &c. of waywarden, by vestry-meeting.
7. Penalty of 20*l.* on waywarden not acting when chosen.
8. Inhabitants may appoint assistant-waywarden, with a salary.
9. Waywarden, on verifying accounts, to give to justices the name and residence of succeeding waywarden.
10. Power to justices, in certain cases, to appoint a waywarden.
11. When parish is situate in more than one county.
12. Waywarden, &c. for every neglect of duty, shall forfeit not exceeding 5*l.* &c.
13. Waywarden to keep highways, &c. in repair.

14. As to repair of highways at ends of bridges.

15. Not to extend to raised causeways, &c.

16. Parishes when liable to repair new highways.

17. Direction posts, where and how to be erected.

18. Waywarden to maintain footpaths; and with consent of vestry to make footpaths.

19. Power to use adjoining ground as a temporary road.

20. Waywarden to make side drains.

21. Waywarden to remove snow, &c.

22. Waywarden to make rate. Rate to be allowed by justices.

23. How the yearly value is to be ascertained.

24. Waywarden may inspect rate-book, and obtain copies or extracts.

25. Rates not to exceed certain amount.

26. Lodgers of houses let out in apartments to be deemed occupiers.

27. Rates on houses furnished or let out into counting-houses, may be recovered from the landlord.

28. Power to compound for rates in certain cases.

29. Landlord, how to be ascertained. Agreements between landlords and tenants not to be affected.

30. Rates for ambassadors to be paid by landlords.

31. Errors in rates may be rectified.

32. Persons may be exempted by justices from payment of highway rate.

33. Persons not liable to payment of highway rate.

34. Rates how to be collected.

35. Vestry may direct overseers to make and collect rate.

36. Who to be deemed overseers within this Act.

37. Vestry may appoint collector of rates.

38. Security to be taken from collector.

39. Assistant waywarden or collector to account.

40. Accounts to be kept.

41. Waywarden to keep books and account of monies received, &c. to be open to the inspection of rated inhabitants.

42. The property in all books, &c. to be vested in waywarden for time being.

43. Waywarden, on quitting office, to deliver books, &c. to succeeding waywarden. Penalty for neglect.

44. In case of the death of waywarden, executors to account.

45. Balances shall be paid by succeeding waywarden, to the amount of one sixth, to his predecessor.

46. A yearly account to be made by waywarden, and verified on oath, subject to appeal. Surveyors appointed under 13 Geo. 3, to pass their account at special sessions after Lady-day 1834.

47. Justices may hold and adjourn petty sessions when they think fit, on giving notice to other justices.

48. Waywarden may contract for getting and carrying materials. If the waywarden has a share in any contract, or shall let to hire any team, or sell or dispose of any timber, stones, &c. without license from two justices of peace, he shall forfeit 10*l.* and be incapable of being waywarden with a salary.

49. Width of wheels.

50. Penalty on taking away materials belonging to waywarden.

51. Land allotted to the parish for materials, when exhausted, may be sold.

52. Tenants for life, &c. may renounce damages.

53. Persons enfeoffed with lands for maintenance of highways, &c. shall let them to farm at the most improved value, with consent of justices.

54. Power to waywarden to hire men and teams.

55. Where statute duty was to be performed on turnpike roads, waywarden to pay money in lieu thereof.

56. Power to get materials from any river or brook, or from any common or waste lands without expense, but filling up the pits, &c. ; or from the lands of any person, not being garden ground, &c. on tendering satisfaction for damages; and materials may be carried through any enclosed or open lands, on tendering damages. Any difference as to damages may be settled by two justices.

57. Notice to be given before materials are taken from private lands, and two justices shall decide thereon.

58. If pits or holes are made in getting materials, waywarden shall cause them to be filled up or fenced off. Penalty for not filling up or fencing off, 20*s.* Penalty for not fencing off, &c. in six days after receiving notice, not more than 10*l.* nor less than 40*s.*

59. Waywarden damaging mills, buildings, dams, &c. by digging materials, forfeit not exceeding 5*l.*

60. Highway lying in two parishes, two justices to determine what parts shall be repaired by each. Proviso in case of highway repaired by party *ratione tenuræ*, &c.

61. Parishes, &c. bound to repair the part so allotted.

62. How costs of proceedings shall be defrayed, &c.

63. Boundary of counties, &c. not to be changed, except for the purpose aforesaid.

64. Highway repaired by party *ratione tenuræ*, &c. may be made a parish highway.

65. What shall be deemed the centre of the highway. No encroachment to be made on waste lands lying on side of any highway.

66. No tree, bush, or shrub allowed to grow on the highway, on forfeiture of 10*s.* by the owners.

67. Owners of adjoining lands to cut the hedges and branches of trees obstructing the roads.

68. Time of cutting hedges and trees.

69. Occupiers of land shall make sufficient ditches, drains, or watercourses, and lay sufficient trunks, plats, or bridges, where cartways,

&c. lead out of highways into such lands, or they shall forfeit for every offence 10*s.*

70. Where the old ditches, gutters, watercourses, &c. are insufficient, new ones may be made. Provided the waywarden make plats, trunks, &c. where necessary, and make satisfaction to the owner of the land for the damages he shall sustain thereby.

71. Powers for removing and preventing annoyances. Penalty for second offence.

72. Penalty for encroaching on highways. Encroachment to be taken down by the waywarden.

73. Railways to be made level with the surface of the road.

74. Steam engines, &c. not to be erected within a certain distance of roads.

75. Penalty on persons committing nuisances by riding on footpaths, &c. by drawing timber, &c. ; by injuring the road ; by damaging banks, causeways, direction posts, milestones, &c. ; by obstructing passage of travellers ; by light from blacksmith's shop ; by making bonfires ; by baiting bulls, playing at football, or other games ; by leaving waggons, &c. ; by laying timber, &c. ; by running of water or fish ; by leaving block stones, &c.

76. Waywardens to impound cattle found straying on highways. Limiting extent of penalty to 40*s.* above expenses. Right of pasturage not taken away.

77. Punishing persons guilty of pound-breach.

78. Carriers' dogs to be fastened to carriage.

79. For discovering of offenders, names of owners to be painted on waggons, &c. in the manner herein mentioned.

80. One driver may take charge of two carts, provided they are drawn only by one horse each.

81. Children not to drive carts, &c. on penalty of 10*s.*

82. Drivers of waggons or carts not to ride thereon, unless some other person on foot guide the same. Drivers of any carriage causing hurt or damage to others, or quitting the road, or driving carriage without owner's name, or not keeping the left or near side, or interrupting free passage, the driver, if not the owner, to forfeit 40*s.* ; if he be the owner 5*l.* Penalty on driver not discovering his name.

83. For securing transient offenders.

84. Cartways are to be made twenty feet wide, horseways eight feet wide, and footways three feet.

85. Previous to highway being widened, &c. waywarden to request justices to view the same.

86. Justices may order narrow highways to be widened. Waywarden to agree with owners of lands for recompense, and if they cannot agree, the same may be assessed by a jury at the quarter sessions. On payment of money assessed, ground to be deemed a public highway. Where there is not money sufficient, a farther rate may be made, by order of the justices at their quarter sessions, not exceeding one third of rate.

87. Cost of proceedings, by whom payable.

88. Proceedings for diverting, &c. certain highways, and stopping up unnecessary highway. Waywarden to affix notice on side of highway, and insert same in newspaper; and after notice on door of Church. On proof of publication of notices and plan being delivered to justices, they shall grant certificate of having viewed highway, &c. Contents of certificate. Certificate and plan, &c. to be deposited with clerk of peace, and read in open Court. Liberty to inspect certificate, &c.

89. Persons who may think themselves aggrieved if such highway should be ordered to be stopped up, &c. may appeal.

90. In case of appeal, jury at sessions to determine whether new highway is newer, &c.

91. Costs to be awarded in appeal against stopping up, &c. highway.

92. If no appeal be made, or if dismissed, sessions to make order for diverting, &c. and the old ways may be stopped, and proceedings shall be conclusive, and new highways shall afterwards continue a public highway, &c.

93. When new highway shall be completed, old highway to be stopped up, and the land sold. Mines and minerals reserved to the owners.

94. In what cases, and in what manner, and upon what terms, the old highways, or the land lying between the fences inclosing the same, shall be disposed of.

95. Provisions as to widening, &c. highway, to extend to highways which persons are bound to repair *ratione tenuræ*, &c. Justices to fix annual amount payable by party previously bound to repair.

96. Mode of proceeding before justices, if highway out of repair. In what cases justices cannot interfere.

97. Mode of proceeding if obligation to repair is disputed.

98. Fines, penalties, and forfeitures, how to be levied and applied.

99. Justice empowered to award costs to defendant, where information, &c. is withdrawn or dismissed.

100. Court may award costs to the prosecutor on indictment.

101. If highway out of repair, no other mode of proceeding than that directed by this act.

102. Waywarden may be a competent witness.

103. Justices may proceed by summons on the recovery of penalties.

104. Power of compelling witnesses to attend.

105. Forfeitures, costs, and charges may be levied by distress and sale. In what manner to be applied.

106. Forfeiture amounting to 40s. may be recovered by action.

107. Satisfaction recoverable for special damage, but distress not unlawful for want of form in the proceedings.

108. Plaintiff not to recover for irregularity, if tender of amends be made.

109. Appeal may be made to quarter sessions by the person aggrieved by any thing done in the execution of this act. No proceed-

ings to be quashed for want of form, or removed by *certiorari*.

110. In case of appeal, sessions may grant a special case.

111. Limitation of action. General issue. Costs.

112. When the Act commences.

113. Expenses for defending prosecutions agreed upon at a vestry meeting, how to be paid.

114. Limiting powers of Act.

115. Not to affect the Universities.

116. Not to affect the county of Montgomery Act.

117. Powers of Commissioners of Sewers not abridged.

118. Concerning the forms of proceedings, set forth in the schedule.

119. The last clause contains the rules for interpreting the principal words used in the Bill.

THE SOLICITOR GENERAL'S BILLS. No. I.

THE DOWER BILL.

As the Bills brought in by the Solicitor General are now in a very forward state, and will soon become the law of the land, we shall lay before our readers a statement of the precise alterations intended to be effected by them, with some suggestions of our own, which we trust may find their way to the proper quarter; and we shall in the first place take the Dower Bill^a.

After some general rules for the construction of the Act, which we may pass over, it provides that widows shall, after the 1st of January, 1834, be entitled to dower as well out of equitable or trust estates as of legal estates. Our readers are aware, that at present, although the husband may be tenant of the curtesy out of equitable estates, the widow is not dowable out of them. This distinction was taken on the construction of the preamble of the Statute of Uses (27 H. 8, c. 10), and has long been considered anomalous. We are glad, therefore, that it is about to be abolished.

By the present law, to entitle the wife to dower, the husband must be seized either in fact or in law, of the lands in question; if he have a mere right of entry or action on them, his widow will not be dowable. This rule often worked much injustice; and the present Bill provides, that although a husband has only a right of entry or action, his widow shall be entitled to dower, although her husband shall not have recovered possession of the lands.

^a See an analysis of the Bill, 2 L. O. 301.

By the present law, if a right to the dower once attaches on land, it can only be barred by a fine or recovery; and it will take precedence of all charges or incumbrances created or effected by the husband. As these rules operate as checks to alienation, and are very inconvenient in practice, it is proposed to enact that no widow shall be entitled to dower out of any land which her husband shall have absolutely disposed of in his lifetime, or by his will, or under his bankruptcy; and that all other estates and interests, debts, charges, and incumbrances, to which his land shall be subject or liable, shall be valid as against the right of his widow to dower. But it is provided that a court of equity may apportion any charges, or any sums affecting any land out of which any widow may be entitled to dower, between such widow in respect of her right of dower, and the other person or persons interested in the same land, or in any other land subject to the same charges.

One great reason which induced the Real Property Commissioners to recommend the present measure, was the subtlety and inconvenience of the present practice of conveying real estate to uses to bar dower. "This ingenious contrivance," they say, "which was long in being perfected, and is now nearly universal, is found in practice to be attended with some inconvenience, and, owing to the mistakes of unskilful practitioners, it occasionally leads to serious mischiefs." And they then say, that by the enactment they propose "this subtle contrivance will become unnecessary."^b It is singular, therefore, that as the present Bill is worded, it seems by no means clear that the necessity for introducing the usual clause will not still exist. The provision on this subject is as follows:—"Be it further enacted, that a widow shall not be entitled to dower out of any land of her husband, when, by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land." By this section, therefore, a husband, being seised of land, may by deed declare that his widow shall not be entitled to dower; but it seems open to great doubt, under this clause, whether, in the same deed by which the land is conveyed to the purchaser, he could declare that the land so conveyed to him should not be subject to dower, as he would not be seised of it until the execution of the conveyance. The Bill should have gone on to provide that it

should be lawful for a purchaser to insert a declaration in his purchase deed, that his widow should not be entitled to dower out of the land conveyed to him. If the Bill passes in its present form, and a purchaser (as is generally the case) is desirous that the land conveyed to him should not be subject to dower, a separate deed, declaring this intention, must be executed after the execution of his purchase deed; or the old expedient of conveying the land to uses to bar dower, which it was intended entirely to supersede, must be resorted to, and will in fact, in most instances, be adopted, to save the expense of a separate deed. So much for modern legislation!

The Bill then provides, that a widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate, when by the will of her husband (duly executed for the devise of freehold estates), he shall declare his intention that she shall not be entitled to dower out of such land, or out of any of his land. It is also provided, that the right or title of a widow to dower shall be subject to any conditions or restrictions expressed in the husband's will.

By the existing law, a devise of lands to a widow will not bar her of dower, any more than a bequest of personalty: by the present Bill, however, it is proposed to be enacted, that the devise of real estate to the widow shall bar her of her dower, unless a contrary intention appear; but that a bequest of personal estate to the widow shall not bar her of dower, unless a contrary intention appear.

The Bill further provides, that an agreement by the husband not to bar the wife of her dower, may be enforced in equity, and that legacies in satisfaction of dower are still to be entitled to preference over general legacies, notwithstanding the act.

The Bill then abolishes two species of dower, which have long been obsolete:—Dower *ad ostium ecclesie*, and Dower *ex assensu patris*.

Its provisions are not to affect any right of dower or freebench out of any land subject to the custom of Gavelkind or Borough English, or any copyhold or customary land, nor to extend to any dower of any widow whose husband shall die before the 1st day of January 1834, or give to any will, deed or charge, executed before that time, the effect of defeating or prejudicing any right or title of dower.

On the whole, we consider this a useful measure. If the omission which we have

^b See the First Real Property Report, 2 Monthly Record, 367.

pointed out be supplied, it will supersede the necessity of what was at best a clumsy contrivance to evade the existing law; and facilitate the alienation of property. We have heard it objected to the Bill, that it will injure the rights of widows; but in practice their rights were always left unattended to, by the constant conveyance of property to uses to bar dower; and it is to be recollected, that if the Bill deprives them of some present chances of obtaining dower, it gives them others which they have not now, by putting trust estates, in this respect, on the same footing as legal estates. We think, therefore, that the ladies have no right to complain.

THE PROPERTY LAWYER.

No. XIII.

LEGACY DUTY.

It was lately decided, in a case first reported in this work, *In re Stonor or Ewing*, 1 L. O. 61; S. C. 1 Tyr. 91; 1 C. & J. 151; that foreign stock, the property of a testator domiciled in this country, is liable to legacy duty. The case has lately arisen, of a native of the United States, who died there, having money in the British funds, and leaving legacies to English legatees, and appointing English executors; and the doubt arose, whether such legacies were liable to legacy duty. The facts and decision of the Court in the case were these:

The testator's father, a native of Scotland, went, when young, to America, fixed his residence and married there, and with his wife lived and died there. The testator was born in Maryland, in the year 1764; he was sent, when much under 21 years of age, to Scotland; and in 1788, sailed to the East Indies, where he continued till 1818, a period of about thirty years. When he went out in 1788, he was entered in the ship's books as an American. In 1818, he returned to Europe, leaving behind him in Bengal the greater part of the property which he had acquired in mercantile pursuits; and then went to America to see his family, and the property which his father, then deceased, had left him there. He afterwards left America, to visit different parts of England, Scotland, and the continent, and to make arrangements for the removal of the greater part of his property to America. On his final return to the United States, he commenced drawing his property there, and continued to do so till his death, which happened on the 23d Nov.

1826, at his residence in New York. He describes himself in his will, as "late of Calcutta, and now of Richmond in the county and state of New York." By his will he gave legacies to persons, some of whom were then resident in Great Britain, some in India, and some in America. He left a personalty in England under 10,000*l.*, and bequeathed legacies to English residents, to an amount exceeding 30,000*l.* The probate duty was paid on the funds in Chancery, and a bill was filed by some of the British legatees, for an account of the testator's estate. The issue was, that the assets were sold, and the produce, 33,975*l.*, has been apportioned amongst the British legatees. The question was, whether the legacy duty was payable upon that sum; and Mr. Baron *Bayley* delivered the judgment of the Court.

"Upon the facts stated, it seems to us to be clear, that the testator was, at the time of his death, a citizen of the United States, and not a British subject; that his personalty, wherever situated, was to be deemed, not British, but American property; and that neither he nor his property were liable, generally, to be bound by British statutes, or contribute to the support of the British government. He was born, indeed, in a province which at the time of his father's death was a part of the British dominions; but upon the first treaty between this country and the United States, he had the option of continuing to be a British subject, or of ceasing to be such, and becoming to all intents and purposes merely an American. It seems to us, that he made his election of the latter. He was not therefore a British subject when he made his will, nor when he died; nor was he, or, as it seems to us, his personal property, bound by the statutes of this realm; so that, though he had when he died some personalty in Great Britain, it must, according to *Ewing's case*, 1 C. & J. 151; 1 Tyr. 91; 1 L. O. 61; be deemed foreign property, and liable to American legacy duty, had any such existed; and he had a right to transmit the personal property which he had here to whom he would, free from every British burden. Had this testator made foreign executors, and given no legacies except to foreigners, there can be no doubt but that the executors would have been entitled to have removed the whole of the property from this kingdom, and to have paid the foreign legatees in full, without deduction, except for the probate duty, which would be imposed upon that property of his which he suffered to be in this kingdom; so that if his executors or legatees had been foreigners, they would not have been liable to the legacy duty. These executors and legatees are indeed British subjects, and as such subject to British laws: but can those facts vary the case as to them, where the testator was a foreigner, and the property to be deemed foreign? They are the medium by whom the property belonging to the testator is to be distributed. Can it make any difference that the legatee is a subject of this realm? The duty is on the legacy given by the testator; and though its burden falls on the legatee, it falls

also on the gift of the testator, diminishing also what he gives. Now had the legatee been a foreigner, he would have taken his 100 per cent.; but being a British legatee, resident in Great Britain, it is contended that the testator gives only 90 per cent., and 10 per cent. to the British government; a strong motive to discourage a foreigner from investing property in British personalty, or making British executors or legatees, if the circumstance of their being personally amenable to the laws of this country would render the property bequeathed them by a foreigner liable to such a deduction. Therefore, upon the principle that the testator is not a British subject, or bound by the laws of this kingdom, and that he is entitled to consider his property, though locally here, as not being the property of a British subject, but of a foreigner, or an American, we are all of opinion that the legacy duty in this case is not payable. The circumstances I have mentioned plainly distinguish this case from the authorities of the *Attorney-General v. Cockerell*, 1 Pri. 165; the *Attorney-General v. Beatson*, 7 Pri. 360; and *Logan v. Fairlie*, 2 Sim. & Stu. 284, 291; for without expressing any opinion, whether the legacy duty would or would not be payable, where the testator was a British subject, but not resident in Great Britain, when he made his will, but disposing by it of property which he happened to have in this kingdom at that time, those cases are distinguishable in this respect, that in each of them the property belonged to British subjects, who being resident in India, and originally British born, were therefore liable to be bound by all acts made by the British Parliament, in terms sufficiently comprehensive to include them. That case, as it seems to us, is otherwise with this testator. The legacy duty is in substance a burthen upon a testator's property. Then if he were not to be bound by the laws of this country, every 100l. which he proposed to give to his legatees would pass into their hands; whilst a decision that his property was liable to the burdens of this kingdom, would prevent any British legatee from obtaining more than 90l. That, as it appears to us, is not the principle upon which these acts of parliament ought to be construed. We are therefore of opinion, that the legacy duty in this case is not payable; and consequently, that the rule must be discharged.

In re Bruce, 2 Tyr. 485; S. C. 2 C. & J. 436.

THE

GENERAL REGISTRY QUESTION.

From all that we can learn the General Registry Bill will not pass even the House of Commons; and it is pretty certain that if it does, it will not obtain the assent of the House of Lords. Many members have been led away by a general impression in favour of the principle; but it is only necessary for them to examine its details and to be made

acquainted with its practical results, and we are satisfied that they will not sanction a scheme which, without benefiting the present holders of property in the least, will unsettle all the existing practice respecting the alienation of real estates.

In the course of our reading we have found an authority against any extensive change in the laws relating to property, which we shall lay before our readers, as bearing directly on the present subject.

"Examination has satisfied us that those niceties and that practice (of conveyancing) are for the most part successful though often cumbrous contrivances of ingenious and learned men, to effect useful objects, which the law, in its present state, affords no direct or simple means of accomplishing. They may, in truth, be considered as indications of the points on which the law requires to be altered, and as partial anticipations of improvement. We are conscious how much easier it is plausibly to expose the imperfections of the law as it now stands, than to shew how it may safely be amended. We know by experience, that a regulation which on a slight view appears inexpedient, may be found, upon a further examination, to be judiciously framed to meet mischiefs which are not perceived, because it represses them. Even a rule of law, on principle essentially wrong, often cannot safely be altered without much caution; for useful expedients have probably been resorted to by courts of justice to evade or to soften it, and these may be the foundation of a train of judicial decisions which it would be dangerous to disturb. *We dread the shock that would be occasioned by any precipitate attempt at emendation; and we recollect that it is as impossible suddenly to change the laws as the language of any country. The remote consequences of every proposed amendment must be sedulously traced, and the consideration constantly kept in view, whether it may not raise new doubts and questions, and cause more mischief than it is calculated to cure. We shall study to interfere as little as possible with established rules, and in all new enactments to preserve the spirit and the analogies of existing institutions.* The very language of the law ought, in our opinion, to be scrupulously adopted in any statutes that may be made for amending it; for we apprehend that disastrous effects would be produced by an experiment to construct a code by the use of terms of an undefined legal import, or of known terms in a new sense. After all the amelioration of which the law of real property in this country is susceptible, the public must not expect that it can be rendered free from complexity and obscurity. They would indeed be too sanguine (quoting Mr. Humphreys) in hoping for a system so simple, and yet so explicit, that every individual of common capacity might understand his rights on each practical occasion. The modifications of this property are too various, the transactions respecting it too numerous, and the lan-

gauge in which these are couched often too doubtful to admit of such expectations being realized. The distinctions and refinements arising from these, must unavoidably render them the subject of peculiar and constant study and practice."

Now from what document do our readers suppose we have made this quotation? These excellent rules are laid down in the First Report of the learned Real Property Commissioners (printed in our Monthly Record, Vol. II. p. 359). Why they have chosen to depart from them in their Second Report, so far as to recommend a General Registry, they have not explained; but we shall venture to set their former against their latter opinions.

As to the Report of the Select Committee of the House of Commons in favour of a Registry, we have repeatedly exposed its fallacies; and a correspondent enables us to do so once more.

Mr. Editor,
I HAVE perused and considered the Report of the Committee on the General Registry Bill (printed in your Monthly Record, Vol. II. p. 416), and the following observations (amongst others) have occurred to me thereon.

The third paragraph appears to be erroneous, and shews by its reference to "former times," and to "a mode of conveyance no longer practicable," that its framers were hard pushed for a comparison. It brings, Sir, to my recollection, a specimen of the sublime, which was furnished by one of the poets of my younger days, who, being in want of a simile, found it in the following line:

"Seen like a *something* on a lofty mountain."

Descending, however, to sober prose, it appears, "that the various changes which time has introduced, have introduced in place of the ancient mode of conveyancing, deeds of different kinds, adapted to the various tenures and conditions to which land is now subject." Yielding an humble but unqualified assent to the accuracy of this sentence, I am compelled, however, as sincerely to withdraw it from the next, that "there is no substitute for that notice which the common law was supposed to give by the open delivery of possession upon the creation of an estate of freehold;" because I am of opinion, that an ample and satisfactory substitute is already provided in the various descriptions of local taxation which our state necessities have imposed upon property, and in the decisions of the law, which I am old fashioned enough to believe are, generally speaking, both wise and good. I particularly refer to *Allen v. Anthony*, in 1 Mer. 382; and *Daniels v. Davison*, in 16 and 17 Vesey, where Lord Eldon held, "that a purchaser was bound to enquire into the occupier's title." I think that the notoriety which these circumstances are calculated to give, must (in the absence of proof to the contrary) after a searching in-

quiry, be reasonably considered as amply sufficient for all the legitimate purposes for which a notice is, or ought to be required, without legalizing what has been designated "an impertinent curiosity," and introducing the complex and expensive machinery of this Register Bill.

There appears, Sir, upon the face of the Report, an apparent desire to establish a distinction between large and small purchases, and to introduce an experiment upon the former; this is, I think, fallacious, unnecessary, and unjust; fallacious, because some difficulty must necessarily arise in fixing upon the given sum which is to give to each purchase its distinctive appellation; unnecessary, because there are but few large purchases completed without a reference to the tenants for some sort of information or other; whilst, in smaller ones, the necessity for such reference does not so immediately appear, and therefore, if none is in fact actually made, it should be regarded as the result of ignorance or carelessness; the law, as I have shewn from the above authorities, making it a necessary duty on the part of every purchaser to communicate with the occupier of the estate purchased;—and unjust, because if all titles, from the want of a Registry, are in fact in that jeopardy which it seems to have been one of the objects of this Report to represent, it is contrary to every principle of justice, which is, or ought to be, the basis of all legislation, to protect the few, and to leave the many unprotected.

In the concluding sentence of the ninth paragraph of the Report, I find the following: "Constructive notice means whatever the Judge thinks the party himself knew, or might have known, or ought to have known; or whatever his attorney, or his attorney's clerk, or his attorney's town agent, or his attorney's town agent's clerk knew, or might have known, or ought to have known." But as I cannot, after a laborious search, find any authority for the above, I shall be obliged to any of your readers who can refer me to one fully supporting the statement; because, as at present informed, it does not appear to me that the doctrine of constructive notice has been accurately put.

I understand, Sir, that it is represented, that the Registry will be of advantage in introducing a new and different system of conveyancing; but pray, Sir, is there any necessity for any alteration, the present system having introduced, according to the opinion of the Committee, "Deeds of different kinds, adapted to the various tenures and conditions to which law is now subject."

Your humble servant,
SENEX.

PLEASANTRIES OF THE LAW. No. VII.

I SHALL again call the attention of my readers to some of the lighter fictions of our law-books.

If one shall, the second time, use any conjuration or witchcraft to provoke love in a maid, this will be felony. 1 Jac. cap. 12.

In the case of *Hooks v. Swain*, 1 Siderfin, 151, *Twisden*, J. says he remembered a nice case. Sir William Fish was bound by obligation to pay (such a day) in Gray's Inn Hall, 50*l.* generally, without saying of money: and therefore upon the day when the gentlemen were at supper, Sir William came in, and tendered fifty pound weight of stone; and adjudged no tender. See also *Owen*, 64, where *Plowden* says, *libra* in Latin signifies a weight; yet if one is bound in *vigint. libris*, and forfeits his bond, he must pay money, and not lead, or the like.

A man entered into a condition not to sell his wife's apparel; and held a good bond, though it was moved to be against law, and contrary to the liberty of a husband, so to oblige himself; but *Coke* held it clearly good; as if one should oblige himself to a stranger, to pay to his wife yearly 20*l.*; this without question is good. *Smart v. Watson*, 1 Roll. Rep. 334.

An adulterer takes away another man's wife, and puts her in new clothes: the husband may take the wife with her clothes; for it is as it were a gift of the said apparel unto her. Besides, the more worthy thing draws to it things of less worthiness; as a base mine, where there is ore, shall be the King's, for the worthiness of the ore. *Finch's Law*, 22, 23. And see *Cro. Car.* 344.

A wife cannot feloniously take her husband's goods; and though she so take 'em, and deliver 'em to a stranger, yet no felony in the stranger. And if a feme covert say of J. S., he stole my plate out of my chamber, although she may not have plate of her own, yet because in common speech 'tis well known that the wife accounts her husband's goods her goods, the words are actionable. *Cro. Car.* 52. Yet for all this she cannot dispose of her husband's goods; and therefore 'twas adjudged, in *Stephen's case*, that where a wife played at cards, and lost 40*l.* of her husband's money, that the husband should recover it again in trover against the gamester. 1 Sid. 122. 1 Keb. 340. *Quære*, what remedy has the gamester if he loses to the wife? Or will the law construe it a gift of the money to her, &c.

'Twas moved to quash an indictment of forcible entry, because the addition of the parties was in English sail-weaver, confectioner, &c.: but the Court overruled it; for many persons have been hanged that have had no other addition in their indictment. Note, it is the constant practice to put them in English in indictments. *Rex v. March*, 1 Sider. 101.

If I make J. S. my attorney, and he (the warrant of attorney still continuing) is made a knight, yet the warrant of attorney is not determined, though the word knight, which is now part of his name, be not in it. By *Brown*, Justice, *Owen Rep.* 31.

A gentlemen is by descent; yet, says Lord Coke, I read of the creation of a gentleman; and thus it was: A French knight came into England, and challenged John Kingston Yeoman, a good and strong man at arms, but no gentleman, at certain points and deeds of arms, &c. *Unde Rex* (saith the record) *ut dictus Johannes honorabilis in premissis accipiatur ipsum Johannem in ordinem generosum adoptavit et armigerum constituit et cetera honoris insignia ei concessit.* 2 *Instit.* 595 & 668.

Libel for calling a man a knave: prohibition lies, because in the time of Hen VI. knave was a good addition. *Week's case*, Latch, 156. 1 Siderf. 149.

It was resolved by the Court, that negroes are by usage *tanquam bona*, and shall go to the administrator, until they become Christians, and thereby they are enfranchised. This was upon a special verdict in an action of trover; the jury finding that negroes are usually bought and sold in India. *Butts v. Penny*, 3 Keb. 785.

So trover lies for monkeys, because they are merchandize, and valuable, without shewing they are tame or reclaimed. 2 *Cro. Car.* 262.

In the time of popery here, if a stranger had taken my goods and offered them to an image in a consecrated ground, this had made as good exchange of the property of my goods as if I had sold them in market overt; but if I found the goods after in the wrong doer's possession, I might take them again. 34 H. 6. 10 Co. 91.

If the wife of an attorney of the King's Bench be arrested, she ought not to claim

the privilege of that Court, not to put in bail to the action, as her husband may; but he must put in bail for her, and for want thereof she shall go to prison. *Stiles, Prac. Reg.* 446.

A writ of conspiracy for indicting one for felony, does not lie but against two persons at the least; therefore you shall not have such a writ against husband and wife, because they are but one person, and one cannot be said to conspire with himself. *F. N. B.* 116 K.

One said of a justice of the peace, "He is a logger-headed, a slouch-headed, and a bursen-bellied hound." This is no cause of indictment before justices of the peace in their sessions, partly for want of jurisdiction, and partly because the words are not actionable. This was assigned for error after judgment. *1 Keb.* 629.

† * †

SELECTIONS FROM CORRESPONDENCE. No. XXIV.

WRIT OF SUMMONS.—PLACE OF SERVICE.

To the Editor of the Legal Observer.

Sir,

THERE seems no sufficient reason why the service of this writ should be confined to one county: it might often be effected elsewhere than at the defendant's usual residence. Many defendants may be found almost any where, rather than there.

At present, a writ is issued, describing the defendant of a certain place. He is not met with in that county; and in order to serve him in another, there must be another writ, which adds materially to the expense.

Now why should not the Courts allow the writ, which is directed to the defendant—and not, as heretofore, to an officer having jurisdiction within certain limits only—to be served on the defendant, wherever he might be found within the Court's jurisdiction; as the analogous process in Chancery and Equity Exchequer—the *subpœna*—may, and as the *subpœna* on the law side of the Exchequer formerly might be served.

The appearance might be directed to be entered in the county mentioned in the defendant's description in the writ.

There is one circumstance against this regulation, which is frequently in the way of improvement—the officers of the Court would lose some fees. Why, then, compensate them.

A. *

SUPERIOR COURTS.

Lord Chancellor's Court.

AGREEMENT.—PERFORMANCE.

A person having an agreement for a lease, becoming insolvent, his assignee is entitled to the lease, if able to perform the covenants of the agreement.

Mr. *Pepys* moved to revive an injunction to restrain the defendant from proceeding with an action of ejectment to turn the plaintiff (the defendant at law) out of a farm, into possession of which he entered, as assignee of one *Pitmore*, who had an agreement for a lease thereof from the defendant. *Pitmore* became insolvent before the lease was executed; and on that ground it was that the Vice-Chancellor discharged the injunction which had been granted; declaring his opinion, that as the proposed lessee became insolvent before the execution of the lease agreed upon, the lessor was absolved from the agreement. This opinion of his Honor could not be maintained; for if *Pitmore* had become a bankrupt, his assignees would be bound by the act 6 G. 4. c. 16, to perfect the lease or abandon the contract. It could never have been contemplated by the legislature, that the insolvency of a person who held an agreement, would absolve the other contracting party from the obligation of his agreement.

Mr. *Bethel* was on the same side.

Sir *Edward Sugden, contrâ*.—The language of the agreement implied that the lessor contemplated a personal agreement with *Pitmore*, at least until a lease should be executed; and there was no authority to assign. The insolvency of *Pitmore*, and his inability to perform the agreement, absolved the other contracting party from it.

The case stood over for judgment from the 23d of February.

The Lord Chancellor having considered the case, and now stating the circumstances, said, that if the assignee was solvent, and able to enter into the covenants of the lease, as agreed upon with *Pitmore*, there was no law to deprive him of the benefit of the agreement. The principle was long established, that an agreement was not to be set aside by the operation of law. This was laid down in a case in 1 *Crompt. & Jerv.*, and also in a case in this Court, as well as in that of *Doe v. Carter*, 8 T. R. 57; in which last case the assignment of a lease by a judgment on a warrant of attorney, was held to be no forfeiture thereof, although there was a covenant against selling or assigning.

It was his Lordship's opinion, that his Honor's order, dissolving the injunction, should be discharged, and the injunction revived, upon the assignee undertaking to pay 140*l.* rent, now due, within three weeks.

Crosby v. Tooke, Lincoln's Inn, Feb. 28, 1833, before the Lord Chancellor.

PRACTICE.

An order for time to answer, after notice that an attachment for want of an answer is sealed, is irregular. A person who obtains an order of attachment is to use his best endeavours to execute it without delay.

One of three motions lately made in this case, was to discharge an order for time to put in an answer to plaintiff's bill, as being irregularly obtained.

The Lord Chancellor, in giving his judgment, said, the irregularity of the order sought to be discharged was, that it was obtained after an attachment was sealed against the defendant for want of an answer. The attachment, it was said, was sealed on the 21st of December, and on the 8th of January, the clerk of the plaintiff's solicitor said to the solicitor on the other side that an attachment would be delivered on the day following (the 9th), unless an order was obtained for time to answer. That notice was, that an attachment would be delivered unless the order should be in the mean time obtained. It was said that if one seals an attachment, it is to be taken to be issued as soon as it is sealed—which may mean, that it is sealed and issued at the same time. Now, if that was the construction, could this order for time to answer be obtained under the authority of *Barril v. Barril*, 3 Swans. 395? I think not; for the party is in contempt as soon as the attachment is sealed, and is not entitled to any order until the contempt is purged. The case of *Barril v. Barril*, only shewed that after notification of issuing an attachment, and before sealing it, an order for time could be obtained. It is my opinion that the case of *Barril v. Barril* does not apply. It is not to be understood that a party can obtain an order of attachment and hang it over the head of another during his pleasure. It is the meaning of the general order of 1649, and it is laid down by Lord Eldon, that each person is to use his best endeavour to prosecute every process of this Court as soon as he can after obtaining it. I cannot say that there was a wilful default here, but the attachment obtained on the 21st of December was not used for three weeks, which lapse of time shewed that the party did not use his best endeavour. In a case similar to this, namely, *Taylor v. —*, which is not reported, Lord Eldon ordered the defendant in contempt to pay the plaintiff three guineas, and gave a fortnight's time to answer. I am disposed to adopt that course here, and to fine the plaintiff the costs of this application.

Farnell v. Tulloch, at Lincoln's Inn, Feb. 28th, 1833. L. C.

Rolls Court.

GAMBLING.—SECURITIES CANCELLED.—COSTS.

A defendant in a suit, instituted to cancel bills given him for a gambling debt, offers, in an early stage of the suit, to give them up; for all the proceedings after that offer he

claims costs: Held, that he is not entitled to costs; but he is discharged from paying costs to plaintiff, for whom a decree was pronounced.

The bill was filed for the purpose of having five bills of exchange, for sums amounting in the whole to 1600*l.*, delivered up to be cancelled, on the ground of their having been given for a gambling debt. The facts charged were, that in March, 1832, the defendant wrote a letter to the plaintiff, urging him to become a member of a club house in Piccadilly, called "the British and Foreign Union Club House;" that in the month of April following, the plaintiff came to London, and was prevailed upon to accompany the defendant to that club house; and that, after having been drinking strong liquors until he became intoxicated, he was induced to play at blind hockey, at which he lost 1600*l.* The defendant accompanied the plaintiff to the hotel where he was residing, and on the following morning urged him to pay the money, representing that if he did not pay it, or give security for it, he would be compelled to fight a duel. In consequence of this representation, the plaintiff accepted the five bills in question.

The defendant, by his answer, admitted that the sum for which the bills were given was won at play; but denied that he persuaded the plaintiff to go to the club, or become member thereof, with any other view than to oblige him. He further said, that the plaintiff, having won of him some money at billiards, voluntarily offered to give him satisfaction at blind hockey, and that plaintiff was perfectly sober at the time of playing, and was in the habit of frequenting gambling houses.

The defendant's counsel now stated in court, that he offered to give up the securities upon the bill being filed. The only question therefore now remaining was, as to the costs of the suit. To those costs the defendant was entitled upon two grounds;—first, because the plaintiff had vexatiously persisted in carrying on the suit, after the offer made by the defendant; and, secondly, because he might have proceeded at law to recover the amount of the securities; and though the statute 9 Ann. c. 14, enabled him to file a bill in equity, in aid of the action, such bill was a mere bill of discovery, in respect of which the defendant was entitled to costs.

The Master of the Rolls said, the object of the clause in the statute of Anne, was to prevent the defendant in an action from resisting discovery, and not to interfere with the undoubted jurisdiction of this Court, to order every void instrument to be delivered up to be cancelled. The circumstances of this case were not such as to induce the Court to compel the defendant to pay the plaintiff's costs; but the Court could not possibly give costs to the defendant. The relief must be granted, therefore, without giving costs to either party.

Newenham v. Muhon, at the Rolls, Jan. 21, 1833. M. R.

PRIORITY OF INCUMBRANCERS.

Where incumbrancers have equal equities, he who first gives notice of his claim has a priority of claim on the fund for payment, although his incumbrance is later in date.

The question in this case was as to the priority of several incumbrancers on the estates of the Duke of Marlborough, and it came on to be argued upon exceptions taken to the Master's report by Sir Charles Cockerell, one of the incumbrancers and of the defendants in the suit. It appeared that in the year 1810, the Marquis of Blandford (now Duke of Marlborough) borrowed from the plaintiff (Foster) a sum of 3,576*l.*, for which he granted an annuity of 447*l.* for four lives. In June 1813, he raised a further sum of 6000*l.* from another plaintiff, and granted an annuity of 750*l.* for four lives; and in the same month of the same year, another sum of 6200*l.* for an annuity of 775*l.* for four lives, to the lender, (William Walker). At the time of the negotiation of the last loan, a deed of trust was executed for the security of the three, to which the Marquis, Foster, Walker, and two others (Howard and Gibbs) were the parties, whereby a certain portion of property to which the Marquis was heir-apparent, was settled on trustees for a term of 500 years, for the purpose of paying up the annuities, with a power of distress, if at any time after the decease of the then Duke of Marlborough, they should be 21 days in arrear. In October 1813, another deed was executed by different parties, viz. the late Duke of Marlborough, the Marquis of Blandford, and, as trustees, Dr. Blackstone and the late Mr. Coutts,—by which estates of the Duke, including that on which the plaintiffs had their *lien*, were conveyed to the trustees, for the purpose of raising, by sale thereof, 30,000*l.* for the Marquis of Blandford, and of discharging the demands of his creditors, according to such priorities as they (the trustees) should determine on. In the year 1814, the Marquis of Blandford again became a borrower, and obtained from Sir Charles Cockerell the sum of 20,000*l.* at 5 per cent. interest, the re-payment of which was secured by a bond and mortgage on the estates to which Mr. Coutts and Dr. Blackstone were trustees, and by a *lien* upon any monies that should be raised upon them, with a power of attorney to sue the trustees. In 1817 the Duke of Marlborough died, and the Marquis of Blandford succeeded to the title; and between the date of that event and March, 1819, the estates comprised in the deeds were sold by the trustees. In the month of March, 1819, Sir Charles Cockerell served on the trustees a notice of his claims. In 1823 the interest of the plaintiffs fell into arrear, and in 1824 they filed their bill against the surviving trustee and Sir Charles Cockerell, praying for an account of the estate in their hands, and the settlement of priority of incumbrancers. The usual decree was made, of reference to the Master, to inquire into the claims of the parties, the amount of funds in the hands of the trustee, and the priorities. The Master by his report declared

the plaintiffs to have priority over Sir Charles Cockerell; and to that part of his report the exception was taken, and was now argued at length before his Honor the Master of the Rolls. The trustee had lodged in Court a sum of 47,508*l.*, three and a half per cent. consols, being a surplus of the monies obtained by the sale of the estates, and he submitted to the direction of the Court.

Mr. Treslove and Mr. Parry, for the plaintiffs, urged that they had an undoubted priority of claim, from the anterior date of their security.

Mr. Pemberton and Mr. Cockerell, for the exception, said, they should not question the general application of the maxim, "*Qui prior est tempore, potior est jure*;" but in this case the nature of the different securities put the adverse parties upon an equal equity, in which case an extrinsic circumstance was allowed to give one party the preference. The annuitants had but a *lien* upon the land, and a power of distress; whilst Sir Charles Cockerell, who had no remedy against the estates while they were unsold, had a right over the purchase-money when they were sold, and a power to sue the trustees at law for his demand on it. The annuitants had no such right at law. Sir Charles Cockerell had given the trustees the first notice of his claim, and upon those grounds should be considered as having the preference in equity, and a priority against the fund in Court. The learned Counsel, in support of his proposition, referred to the case of *Deeds v. Hall*, 3 Russ. 1; and *Leveridge v. Cooper*, *Ibid.* 80; the case of *Stanhope v. Varnes*, 2 Eden, 81; and Butler's note to Co. Litt. 296 b.

His Honor postponed his judgment to a subsequent day; when, after reviewing the case and the arguments, he expressed his opinion that the Master came to a wrong conclusion, and that the exception should be allowed. The equities of the two parties, as far as depended upon title, were equal; but the prior notice of claim given by Sir Charles Cockerell, gave him a priority on the fund. *Foster v. Blackstone*, at the Rolls, March 4, 1833. M.R.

King's Bench Practice Court.

ADMISSION OF ATTORNEY.

Where notice of intention of applying for re-admission may be stuck up in King's Bench Office after the commencement of term.

On applying to re-admit an attorney, it appeared that the first day of Michaelmas term was on the 2d of November, and the 1st of November was a holiday in the King's Bench Office. He was therefore unable to stick up his notice in that office on the 1st of November. On the 2d November, however, he stuck it up at the opening of the office. There it remained throughout the term. All the other requisites stated in the Rule of Court, T. 33 G. 3. had been complied with. It was submitted that sticking up the notice in the King's Bench Office as he had described, was a sufficient compliance

with the rule in that particular. *Ex parte Davy*,^a was cited, where an attorney intending to apply to be re-admitted on the roll, affixed his notice outside the Court in the morning before the sitting of the Court on the first day of term, of which notice was intended to be given, the Court held that it was a sufficient compliance with the rule of T. 33 G. 3.

Parke J.—Let him be re-admitted.

Rule granted—*Ex parte Senior*, H. T. Jan. 11th, 1833. K. B. P. C.

AWARD.—ATTACHMENT.—COSTS.

Where an attachment will not be granted for nonpayment of costs.

Erle shewed cause against a rule obtained by *Baratow* for an attachment against the plaintiff for nonpayment of the defendant's costs in the cause. A Judge's order for the reference of the matters in difference in the cause had been made, and the arbitrator had found that the plaintiff had no cause of action. This order was made a rule of Court in the term after the making of the award. A few days after the term the defendant died. After his death the costs of the cause were taxed, and the rule *nisi* for an attachment against the plaintiff for the nonpayment of those costs was obtained on the part of the defendant's administratrix. He contended that the present rule for an attachment could not be made absolute. The power of the court to grant an attachment could only exist in the case of its suitors. Here, however, the defendant being dead, the cause has ceased to exist; and therefore the power of the Court to grant an attachment had ceased also. He was aware of the case of *Rogers v. Stanton*,^b but that case, he submitted, would not now be regarded as law.

Baratow, contra, submitted, that the case of *Rogers v. Stanton* was perfectly in point, and there was no reason for the suggestion made, that the Court ought not to be guided by it. The circumstances in that case were not so strong as those in the present. It did not appear there that the defendant was alive an entire term after the award had been made, or that the submission had been made a rule of court in his life-time. As to the argument that the suit had abated, it might be that the suit had abated for any purpose of establishing right, or imposing a liability not previously existing, but not for giving effect to previous rights or enforcing previous liabilities. He contended, therefore, that the previous rule must be made absolute.

Per Curiam.—We are of opinion that the only remedy of the defendant is by action. The suit having abated, the Court cannot grant an attachment.

Rule discharged—*Maffey v. Godwin*, Jan. 29th, 1833. K. B. P. C.

Eschequer.

ARREST.—PROBABLE CAUSE.—COSTS.

Where goods are sold with a warranty, and the warranty is found to be false, the purchaser cannot therefore rescind the contract, by endeavouring to return the goods, unless the defendant agrees to take them back, or unless an express right to rescind is reserved at the time: and therefore, where a horse was sold warranted sound, and the horse proved to be unsound, but the seller refused to take back the horse, it was held, that the purchaser could not bring money had and received, and arrest for the price, having only a right to sue for damages. The seller having been arrested, and a less sum recovered, it was held to be an arrest without reasonable or probable cause; and that defendant was entitled to his costs, under the 43 G. 3. c. 46. § 3.

R. V. Richards and *Butt* shewed cause against a rule which had been obtained by the defendant, calling upon the plaintiff to shew cause why the defendant should not be allowed his costs, under the 43 G. 3. c. 46. § 3, for having been arrested and held to bail by the plaintiff for a larger sum than he recovered. The arrest was for 90l.; the sum recovered 48l. 8s. 6d. The circumstances out of which the action arose were these: The plaintiff bought a horse of the defendant, at the price of 90l., and the defendant warranted the horse to be sound: the defendant, in payment, took 30l. in money, and a horse of the plaintiff, valued at 60l. The horse purchased by the plaintiff of the defendant turned out to be unsound, and thereupon the plaintiff offered to return it: but the defendant refusing to take it back, it was sent to a livery stable; and the plaintiff caused a notice to be served on the defendant, informing him of the unsoundness of the horse, that it was standing at the livery stable at his expense, and that it would be sold by auction. The warranty being found to be false, and the plaintiff having done all in his power to rescind the contract, it was treated as at an end; and the plaintiff held the defendant to bail in 90l., the price of the horse. The affidavit was for 60l., for the price and value of a horse sold and delivered, and for 30l., for money paid. The declaration contained special counts upon the contract, and also the common counts. It was contended, that under these circumstances, an action for money had and received would lie against the defendant. But the question is here, whether there was not reasonable or probable cause for the arrest. In the case of *Turner v. Prince*,^a the arrest was for 100l., and upon a reference, only 39l. 18s. were found to be due; yet, because the case was rather complicated, and though the sum recovered was so materially less than the sum for which the defendant was arrested, the Court refused to interfere. So, in *Sherwood v. Tayler*,^b where the arrest was

^a 4 D. & R. 646.

^b 7 Taunt. 576.

^a 5 Bing. 191.

^b 6 Bing. 280.

for 327*l.*, and the sum recovered only 250*l.*, the Court held, that the difference was not so material as to induce them to interfere; *Tyndal*, C. J. observing, that the labouring oar was thrown on the defendant, to shew that so much was not due. In both cases it was considered necessary that the evidence given in support of such a motion, must be such as would support an action for a malicious arrest.

Bayley, B.—It is not necessary that the arrest should be malicious^c: but was there any authority to rescind the contract? If not, the plaintiff was only entitled to recover damages for the breach of contract, and not to sue for money had and received.

Butt.—When the horse was discovered to be unsound, we were entitled to rescind the contract. We gave notice to the defendant, and he in fact brought back the horse he had of the plaintiff, with the view of returning it; but a quarrel took place, and nothing was done.

Bayley, B.—You lay it down as clear law, that a party can rescind a contract, where the warranty is not complied with: but the case of *Street v. Blay*^d is a directly contrary decision. Unless you reserve your right to rescind at the time, at a later period you cannot do so.

Lord *Lyndhurst*, C. B.—On that contract you had no right to rescind, unless the other party agreed to it.

Bayley, B.—You describe, in the declaration, the contract as still in operation: if so, you cannot bring money had and received. *Towers v. Barrett*^e.

Butt.—There were the common counts.

Lord *Lyndhurst*, C. B.—Did you prove an agreement to rescind at the trial?

Butt.—It was proved by the plaintiff's attorney that he served a notice on the defendant that the horse was unsound, and that it would be sold by auction, and that it was then standing at livery at his expense. No rescinding of the contract was absolutely necessary. The defendant attended on the plaintiff, to rescind the contract; but the negotiation went off.

Lord *Lyndhurst*, C. B.—That was not finally completed, and therefore the contract was not rescinded. You hold to bail for 90*l.*, when you were not entitled to do so.

Butt then cited *Sheldon v. Cox*^f, where the plaintiff having exchanged a horse for another horse and a sum of money, and the defendant refused to pay the money, alleging that the plaintiff's horse was unsound, it was held, that the money might be recovered under the common counts.

Bayley, B. referred to *Weston v. Downes*^g, as shewing that an action for money had and received, or money paid, will not lie to recover a payment which has been made on a contract which is still open; and also to *Street v. Blay*,^h

where Lord *Tenterden*, in his judgment, cited *Weston v. Downes*, and *Towers v. Barrett*, and laid it down, that that class of cases was rightly decided: and it was there held, that a purchaser cannot, by his own act alone, though the warranty is false (except in cases where the contract expressly authorises a return, or the vendor has received back the chattel, or has been guilty of fraud), treat the contract as at an end, and re-vest the property in the seller, and recover the price, when paid, on the ground of total failure of consideration.

Lord *Lyndhurst*, C. B.—If these cases are right, your remedy was by an action for damages, and not by holding the defendant to bail.

Butt.—We did all in our power to rescind; and acting upon that fact, we had a reasonable cause for arresting.

Per Curiam.—It is clear you had no right to rescind; and the contract never was in fact rescinded. There must be two consenting parties; both must agree to rescind. Though you returned the horse, and left it for a short time, the defendant would not accept it. If the contract is open, so as to give you a right to damages, you must bring your action for damages, and cannot bring an action for money had and received; nor can you arrest. The rule must be made absolute.

Rule absolute.—*Gompertz v. Denton*, Nov. 23, 1832. Exch.

NOTES OF THE WEEK.

House of Lords.

SUITS AT COMMON LAW.

This Bill waits for the second reading. The clauses to which we referred in our last Number, p. 376, as contained in the former Bill, and omitted in this, are in effect comprised in the 17th clause of the Lord Chancellor's Law Amendment Bill, by which the Judges are to be authorized to make regulations for the admission of written documents.

All such other clauses as are useful in Lord Wynford's Bill might be better incorporated in that of the Law Amendment Bill, than passed in the form of a distinct statute.

LAW AMENDMENT.

This Bill, at the time we go to press, waits for the Committee, which was appointed for Friday the 22d instant; but in the absence, on the circuit, of Lord Lyndhurst and the other Judges, whose opinions on any alterations that may be suggested would be of course highly requisite, we pre-

^c *Donlan v. Brett*, 10 B. & C. 117.

^d 2 B. & Adol. 456.

^e 1 T. R. 133.

^f 3 B. & C. 420.

^g 1 Dougl. 23.

^h 2 B. & Adol. 462.

same but little, if any progress, will be made at present.

Our readers will find the Bill printed verbatim in the present number, accompanied with materials which will enable them to form an opinion of its merits and defects.

House of Commons.

REAL PROPERTY BILLS.

Mr. Tooke has given notice of a motion for the 27th instant, "that the consideration of the Fines and Recoveries Bill, the Dower Bill, and the Curtesy of England Bill, be referred to a Select Committee." The Limitation of Real Actions Bill is not mentioned in the notice; but we presume will be included in the motion. The periods of limitation proposed are very objectionable, and at variance with Lord Tenterden's recent Prescription Act. We shall observe on this Bill in due course.

This motion, we observe, has since been adopted by the Solicitor General, and he has included the Limitation Bill.

FREEHOLDS AND COPYHOLDS.—DEBTS.

Mr. John Romilly has given notice of a Bill to make Freehold and Copyhold Estates in all cases Assets for the Payment of Simple Contract Debts.

LUNATIC COMMISSIONS.

This Bill waits for the second reading.

SURREY ASSIZES.

The second reading of this Bill has been fixed for the 29th instant. The authorities at Bury St. Edmunds have very naturally petitioned against the measure, and those of Ipswich in its favor. What is the general opinion of the county?

LANCASHIRE ASSIZES.

We observe that a petition has been presented from the Chamber of Commerce and Manufactures, at Manchester, to hold Assizes at Manchester or Salford, as part of the Northern Circuit. This proposal is well entitled to consideration: alterations such as these, after proper deliberation, may remove objections to our judicial system, and, by correcting real inconveniences, render unnecessary those violent changes, which will endanger, if not destroy, the excellence of our existing institutions.

JUSTICES OF THE PEACE.

The Bills for the more effectual Administration of the office of Justice of the Peace,

are to be moved for by Mr. Lamb, on the 25th instant. We must notice how these measures affect the trial by jury. It has been too much the fashion of late to abridge the exercise of that tribunal, and delegate power to the magistrates.

LIBEL.

The motion of Sir F. Vincent, for a Bill to alter and amend the Law respecting Libel, has been deferred till the 28th instant.

DRAMATIC LITERARY PROPERTY.

This Bill has been read a second time, and committed for Monday next.

ANSWERS TO QUERIES.

State of Landlords and Tenants.

RENT AND TAXES. P. 355.

Goods seized under a *f. fa.* at the suit of a subject, are *before the sale* liable to be taken by virtue of the King's extent, tested *subsequent* to the delivery of the *f. fa.* to the sheriff; *Per v. Wells*, 16 East, 278, n.; and the sheriff will not be liable to an action by the subject for paying the money into the Exchequer, arising from the sale of the goods in such case. *Thurston v. Mills*, 16 East, 254. This appears to be recognized by the Court of Exchequer as clear law. Therefore, as the goods of *A.* which *B.* distrained for rent, *not being sold before* the King made his claim and issued his execution, they will unquestionably be subject to the payment of the assessed taxes *before* that of the rent owing to *B.* H. A.

State of Property and Coverture.

MORTGAGE.—HUSBAND AND WIFE. P. 323.

The question of "*Mancuniensis*" is not quite clear. He does not state whether he applies his case to freeholds or chattels real of the wife. If to the former, a mortgage by the husband alone can be of no effect after the coverture is determined, unless it be subsequently confirmed by the wife or her representatives, as in the case of *Goodright v. Strathorn*, 1 Dougl. 53: if to the latter, by mortgaging his wife's chattels real, the husband partially exercises the power which he has over them, both at law and in equity; and although the question may arise, to whom the interest undisposed of—viz. the equity of redemption—belongs; the conversion of the property is, as far as it goes, absolute against the wife, who has therefore no equity against the husband's estate. But I conceive "*Mancuniensis*" alludes to the case of a fine levied by husband and wife, of the wife's lands, solely for the purpose of securing a sum of money due from the husband; in which case the wife has a right in equity to have her estate exonerated from the mortgage, out of her husband's personal property, although the equity of re-

demption be reserved to him alone. *Ruscombe v. Hare*, 6 Dow. Parl. Ca. 1. A. *Innes v. Jackson*, 16 Ves. 356. 1 Bligh. Parl. Rep. 104. She may, however, waive this equity, by a verbal declaration to the husband's representatives. *Clinton v. Hooper*, 1 Ves. jun. 172 a.

MEDIE.

LEGACY TO WITNESSES. P. 371.

1. It was held by Sir William Grant, in *Lees v. Summerhill*, 17 Ves. 508, that a legacy to a subscribing witness to a will of personal estate, was an interest which he could not legally claim, by reason of the statute 25 G. 2. c. 6. A contrary doctrine was maintained by Sir John Nicholl, in *Brett v. Brett*, 3 Addams, 210, where it was held, that the statute is limited in point of true construction, to wills and codicils of *real* estate. This decision was afterwards affirmed on appeal, by the Court of Delegates, 3 Russ. 437, note; and has been followed in the cases of *Emanuel v. Constable*, 3 Russ. 436, and *Foster v. Bunbury*, 3 Sim. 40. Hence it would seem that in the present instance the witnesses will not be entitled to their legacies; for it cannot be doubted, that a Court of Equity would extend the construction put upon the statute by Sir John Nicholl, and decide that it should include wills and codicils involving *both real and personal* property, inasmuch as there seldom occurs an instance of a will or codicil of *real* property, which comprises *real* property exclusively. It may be remarked, that the English Law, which in the matter of succession to property, in many respects follows the rules of the Civil Law, here differs from it, as by the Civil Law legatées might be admitted as witnesses to a will of real property.

F.

2. The witnesses are not entitled to their legacies. The first part of 25 G. 2. c. 6, which was passed to restore the competency of subscribing witnesses, extinguishes all interest which they would otherwise take under the will. It was formerly held, that if *one* of the witnesses had an interest under the will, he was not a credible witness, within 29 C. 2. c. 3, and that *even the will itself was void*; which was decided in *Anstey v. Doursing*, Str. 1253. That decision gave rise to 25 G. 2. c. 6; by §§ 1, 2, and 6, of which statute, it is enacted, that if any person shall attest the execution of a will or codicil, to whom any interest, gift, &c. shall be thereby given, such interest, gift, &c. shall, so far only as concerns such person attesting or any person claiming under him, be *utterly null and void*. A charge on lands for the payment of any debt owing to a subscribing witness, does *not*, under this statute, incapacitate such witness.

W. W. B.

QUERIES.

State of Property and Conveyancing.

ASSIGNMENT OF LEASE.

C. P. granted a lease of a house to D. for 21 years: usual covenants, and covenant not to assign without consent, &c. D., with consent of C. P., assigned to H. & Co. H. & Co., *without consent*, assigned to E. F. (the receipt

of rent paid by E. F. was given as paid by H. & Co.) E. F. became insolvent, and removed all his goods off the premises, and sold them, and left the country, with an arrear of rent. C. P. called on H. & Co. to pay the arrear. Can he do so? And can the lessee assign (there being no restricting clause in the lease) without consent of the lessor, and not render himself liable to him for the default of the assignee?

M. E.

State of Attorneys.

CHARACTER OF A CLERK.

An officer of an Ecclesiastical Court dismisses a clerk, who obtains a situation with a proctor; and it is necessary to enter his clerk's name in a book kept in the Public Registry, and without which he would not be authorized to search the records. The officer objects to such entry, on the score of intemperate disposition, having nothing else to allege against his character. The clerk, without such entry, can be of little or no use to his employer. Will an action for damages lie against the officer?

J. T. S.

Practice.

NEW RULES.

By general rule of H. T. 2 W. 4. it is ordered, that the plaintiff's claim for debt and costs shall be indorsed on the writ, "and that if the amount thereof be paid in *four days* from the service (or arrest), further proceedings will be stayed." Since this rule was promulgated the Uniformity of Process Act has passed, and in the form of process, as prescribed in the schedule to that act, the defendant is commanded that *within eight days* after service he should cause an appearance to be entered for him, &c. The rule as to indorsing debt and costs is, in practice, still complied with, although not mentioned in the new act. By the *rule* the defendant is warned to pay the debt and costs within *four days*; or Under the *act* he has *eight days* time to enter his appearance.

1. Is the four day rule (if it may so be termed) not inoperative?

2. Has not a defendant the *whole eight days* to settle?

3. Is an attorney justified in demanding *more costs*—say for declaration—than those indorsed on the writ, if defendant tenders them *before the eight days* have expired, but *after* the expiration of the *four days*? T. S.

MISCELLANEA.

HISTORY AND USE OF FINES.

The expected abolition of these ancient modes of concluding questions of title, induces us to extract the following definitions from West's Symboleography, Part 2, fol. 1.

"Tremaine 21. E 4 fol. 4. *tearmeth fines*, covenants made before justices, and entered of record.

"Browne saith, fines be *fructus, exitus, & finis officiorum Legis*. Plow. fol. 357.

"Glanvil in his eight booke and first chapter *tearmeth a fine Amicabilis compositio, & finalis concordia ex consensu & licentia domini Regis*.

vel eius Justiciariorum. And Bracton tractatu quinto, Lib. 5. cap. 28. Sect. 7. de Exceptionibus saith, Finis ideo dicitur finalis concordia, quia imponit finem litibus, & est exceptio peremptoria.

"And Glanvil, cap. 3. Lib. 9. saith, Talis concordia finalis dicitur, eo quod finem imponit negotio, aded ut neutra pars litigantium ab eo de cætero poterit recedere.

"In which bookes may be seene thauncient forme of levying fines, and their great antiquitie: for they be as auncient as any Court of Record, Plowd. fol. 357. a. 368. b. which without question were long before the Conquest.

"So that fines having their commencement of record long before the Conquest, ever since have remayned in great estimation, as appeareth by a fine levied before the Conquest, touching the possession of the Abbey of Crowland, and divers other auncient fines levied before that time yet extant, Plowd. 357. a. 368. b.

"But chiefly wee are to consider their effects, which be to make *certeintie and assurance* to the parties concerning their estates in lands and tenements, and to *end contention*, and breed peace and securitie to all men.

"As appeareth by the statute de Finibus 27. Edw. 1. stat. 1. cap. 1. wherein be these words, Quia fines in Curia nostra levati finem litibus imponere debent, et imponunt: Ideo fines vocantur maxime cum post Duellum et magnam Assisam in suo casu ultimum locum finalem teneant imperpetuum: with which statute agreeth Bracton tractatu 5. Lib. 5. c. 28. Sect. 7. de Exceptionibus.

"And therefore by thauncient law, fine and nonclaime by the space of a yere and a day was a peremptory barre to all men, which was abrogated by the statute made 34. E. 3. cap. 16.

"And at this day fines be of great force, puissance, and worthinesse: for being levied and ingrossed with proclamations, according to the statute of 4. H. 7. cap. 24. 1. R. 3. cap. 7. 32. H. 8. cap. 36. & 31. Eliz. Reg. cap. 2. They are finall endes, and sufficiently conclude, barre, and discharge for ever as well parties and privies as estrangers to the same, except women covert (other then beene parties to the fines) and every other person at the time of the levying of the same fine being within the age of xxj. yeres, or in prison, or out of the realme, or of unsound mind, and not parties to such fines: Saving unto estrangers to such fines such right, title, claime, and interest, as they have to the tenements therein contained at the time of thingrossing thereof: so that they pursue the same by action, or lawful entrie within five yeres next after proclamations thereupon made according to the said statutes: And saving to all other persons such action, right, title, claime, and interest, in, or to the tenements in such fines mentioned, as first shal grow, remaine, descend or come to them after the said fine engrossed and proclamations made, by force of any cause or matter had or made before the said fine levied: so that they pursue their action, right, or title within five yeres next after that it is to them accrued.

"By which authorities we gather that fines are nothing els, but instruments of record of

agreements concerning lands, tenements, or hereditaments, duely made by the king's consent and licence, and knowledged by the parties to the same upon a writ of Covenant, a writ of Right, a writ of Customes and Services, Warrantia charte therof, or such like, before the Justices of the Common place, or others therunto authorized, and ingrossed of record in the same Court, to ende all controversies thereof both betweene themselves which be parties and privies to the same, and all estrangers not suing or clayming in due time.

"There fines destroy estates taile, (other then such as be made by the king, the reversion being in the king, 32. H. 8. cap. 36. And other then fines of lands restrained from alienation by act of parliament, 32. H. 8. ca. 36. Or levied by an Intrudor of lands seised into the king's hands, as by an heire which holdeth in Capite before Livery sued, 1. H. 7. c. 5. For by the Prerogative, cap. 13. by his entry he gaineth no freehold.) And in time become perpetual barres against al men, end strife, make peace, breede securitie and tranquillitie, which is the very fruit, effect, and end of all godly lawes."

THE EDITOR'S LETTER BOX.

The length and importance of the Lord Chancellor's Bill, and the arrear of matter in all our usual departments, have obliged us this week to give a *double number*.

"A Regular Subscriber" complains that some of the cases digested in the November Digest are repeated in the February Digest. This is perfectly true; but, according to the plan of that part of the work, correct. The cases in the November Digest, as he will see by referring to them, were reported *by our own reporters*. The same cases were *afterwards* given in Mr. Dowling's Reports; and according to our invariable practice, we have always thought it right to authenticate our own reports by a reference to the subsequent established Reporters. Our candid supporter will therefore see that the circumstance he points out is rather matter for praise than censure. It will not, however, occur again, as we announced in our last Digest that in future we shall only give the *names* of the cases reported in our work.

A Correspondent complains of the inequality of the prices of some of the Law Reports. The charge for a number of one Reporter, containing 160 pages, is 9s.; and for a number of another, containing 187 pages, only 8s. Our friends, the law-booksellers, may perhaps explain this?

The "Disputed Decision" of *David v. Friend*, shall have our early attention.

The able and elaborate paper of H. G. has been received; but amidst the pressure of so much other important Parliamentary matter as we have now before us, we apprehend it must be deferred. The subject, too, seems now at rest.

The Queries and Answers of T. J. F.; J. H.; I. L.; M.; I. C. S.; "A Student"; "Anon."; E. N.; X. Y. Z.; and various others, are unavoidably deferred till next week.

The Legal Observer.

Vol. V. SATURDAY, MARCH 30, 1833. No. CXXXII.

———"Quod magis ad nos
Pertinet, et noscire malum est, agitamus."

HORAT.

THIRTY REASONS AGAINST THE GENERAL REGISTRY BILL.

I AM opposed to a General Registry of Deeds in England and Wales,

1. Because, if passed, it would unsettle the whole of the present system of the alienation of property throughout the country.

2. Because it might injure the present holders of property, and could not benefit them.

3. Because, whatever merits it may possess, and however well it may be suited to other countries, ~~it~~ cannot with safety or prudence be introduced into England and Wales, where the transactions relating to property differ in number and quality from those in any other country.

4. Because it has been already tried under the name of the Enrolment Act, 27 H. 8. c. 16, and failed.

5. Because a Registry already exists in certain parts of England, and is found there to occasion more evil than benefit.

6. Because property now situated in a Register County is not more sought after than in a county in which no registry exists.

7. Because the great reason for the introduction of the measure is the supposed fraud which arises from concealed deeds; which it has been proved does not happen once in one thousand times.

8. Because another great reason for the introduction of the measure is the inconvenience which arises from lost deeds; which it has been proved does not happen once in a thousand times.

9. Because we should legislate for the rule, and not the exception.

10. Because the other inconveniences of the existing system could be remedied by a measure much less sweeping than a General Registry.

11. Because it would greatly increase the expense of every alienation of property, and thereby fetter its disposition.

12. Because it would impose an additional tax on land.

13. Because it would be an intolerable burden on all small purchases, which are far more numerous than any others.

14. Because it would disclose the private transactions of individuals to the malicious and ill-disposed.

15. Because it would materially injure, if not entirely prevent, the present system of raising money by deposits of deeds, which has saved thousands from ruin.

16. Because it would entirely alter the existing relations between lessors and lessees.

17. Because it would injure the landed interest.

18. Because it would injure the merchant and tradesman.

19. Because the wishes of the people of England are against it, there having been hundreds of petitions against it and not one for it.

20. Because the titles of many, by its means, must be rendered irremediably defective, as it would create a new ground for the invalidity of titles.

21. Because all deeds must be sent up to London, and exposed to the hazards of travel, and thus may be lost or destroyed.

22. Because by the accident of one fire, the whole of the muniments of the country might be destroyed.

23. Because the immediate expense of the plan would be considerable.

24. Because there is no example of a Registry so extensive, the practical details of which have answered.

25. Because the expense and difficulties of a search would in themselves counterbalance the advantages of the measure.

26. Because it is intended to be a compulsory ceremony, which no purchaser would have the choice of avoiding.

27. Because the opinions of nine tenths of the professional men in the kingdom, and particularly of those who are practically acquainted with the present system, are opposed to the plan.

28. Because it would delay every transaction connected with real property, which in many instances must entirely defeat their object.

29. Because if its supposed advantages be real, they would benefit the future holders of property at the expense of the present.

30. Because it should have been the last, and not the first of the proposed reforms in the law of real property.

[And one reason more]—

31. Because when the foregoing thirty reasons are answered, there are one hundred more which remain.

J.

OBSERVATIONS ON THE LAW AMENDMENT BILL.

HAVING, in our last number, enabled our readers to judge of the grounds and reasons of the several clauses of this Bill, it is not necessary that we should much enlarge upon the utility or importance of the measure.

The Bill appears to have been framed with care; and, taken as a whole, is one of the most unexceptionable measures which has been for some time presented to Parliament. Notwithstanding, however, the learning and experience which are displayed in framing its numerous clauses, there must be, in the nature of things, some occasional imperfection in the enactments proposed. But approving, as we do, of the general scope of the Bill, we are unwilling to interpose any minute objections, or suggest any unnecessary alterations in the details. We doubt not these will be provided for, either in the Committee on the Bill, or by the Judges, in the exercise of the powers which

are to be confided to them. We venture, however, on the following observations:

The 1st and 17th sections—the former on Pleading, and the latter on the Admission of Written Documents—confer large powers on the Judges; but we know not that the business of the Courts can be well conducted without such powers; and no doubt the Judges are more likely to frame proper regulations, than either “a select Committee,” or “the whole House.” Although there is great inconvenience and expense in frequent alterations, it is important that the defects which arise in practice should be *speedily* remedied; and this can be accomplished only by delegating sufficient authority to the Courts. The 23d section, as to the Payment of Money into Court, and the 25th, as to Variances, also invest the Judges with new powers.

The 2d clause, relating to Actions by and against Executors, might perhaps be improved, particularly as to the limitation to six months, which seems insufficient; for the injury may not, in that short period, be discovered; and the other limitation, of a year, we think, should be calculated from the time of probate or administration, and not from the death of the party. It is also desirable that actions, like suits in equity, be capable of revival by the representatives of a deceased plaintiff.

It is singular that the 5th section limits Actions of Debt on Bond, &c. to *ten* years, whilst one of the Reports of the Common Law Commissioners (on which the Bill is almost entirely founded) strongly recommends *twenty* years—a period long recognized in presumption of law. We trust this will be altered.

The rule, under the Statute of Limitations, by which, when the time, having once begun to run, continues, though the party may have laboured under disability or absence, has long been felt to be one of great hardship; for a debt may be contracted, and the debtor leave the country before the creditor has an opportunity to commence his suit; yet if the debtor stay abroad for six years, by design or otherwise, the action is barred. The justice of the case seems to be that, during such absence, or disability, the statute should not run. We trust, therefore, the 6th clause will be extended.

The clauses from 19 to 22, inclusive, which provide for the Trial of Issues relating to demands of a limited amount, say of *twenty pounds*, we think must be generally assented to by the profession. Some change in the mode of recovering small debts is

imperiously required by the public; and the plan proposed in this Bill appears well calculated to effect the object, and at the same time to retain the important advantage of the controul and supervision of the Superior Courts over the unavoidable imperfection of petty tribunals.

The sections 30, 31, and 32, which authorize a jury to give Interest on Debts, and in trover, trespass, &c. and enable the Court to allow it on Writs of Error, are well entitled to support.

The only other section on which we have to remark is the 38th, which enables the Judges to make regulations for the Taxation of Costs. We wish that the Courts had power to award the successful party all his *reasonable* costs, and that no costs should fall on him except those which were improperly incurred, and which of course he would not be liable to pay to his attorney, unless he had taken on himself the risk of the extra expense. We have heard it said, by those whose opinions we respect, that this would be absurd, and that some practitioners would heap on a defendant unnecessary costs. But the taxing officer would allow against the defendant such costs only as, if the plaintiff had to pay them, would be necessary and reasonable. Admitting, however, the danger of some abuse, we think it is far outweighed by the injustice now inflicted on the suitor, and the manifest disadvantage to the practitioner, who in many cases is obliged to forego his extra costs, however just, on account of the hardship to his client.

DOWER.

NOTE FROM PROFESSOR PARKE.

To the Editor of the Legal Observer.

Sir,

I am inclined to think, that the observation in your last number, on the Dower Bill, as to the ambiguous effect of the clause negating the right of dower when the husband shall, by any deed executed by him, declare that his widow shall not be entitled, is founded upon your having the bill *as originally printed* before you, and not the bill as amended by the Committee of last Session. When I first saw the original bill, I was struck with a difficulty upon that clause; not exactly that which you have suggested, for I do not think that would arise; but the difficulty that if the conveyance to a purchaser, although containing the negating declaration, should, by any accident, not be

executed by him, it would not be within the act; whereas, under the present uses to bar dower, it is immaterial whether the purchaser executes or not. I took the liberty to suggest this to one of the learned Property Law Commissioners; and in the amended bill the clause accordingly stands thus:

"That a widow shall not be entitled to dower out of any land of her husband, when, *in the deed by which such land was conveyed to him*, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land."

This removes both your objection and mine, unless, as to the latter, some fastidious person should object that the words, "executed by him," have a reflective operation over the whole clause; and this question the Judges may not improbably have to decide.

I am, Sir,

Your obedient servant,

J. J. PARKE^a.

23, Southampton Buildings,
Chancery Lane, 23d Mar. 1833.

PRACTICAL POINTS OF GENERAL INTEREST.

No. XLIII.

OFFICIAL ASSIGNEES.

THE following case is of some consequence with respect to official assignees:

In this case the bankruptcy had been found before the present act came into operation; but assignees had not been chosen. By the Act 1 & 2 W. 4. c. 56. §§ 39, 40, it is enacted: "That all power, jurisdiction, and authority of the commissioners named in any commission of bankrupt depending in the Court of Commissioners of bankrupts in the city of London, shall cease and determine, and that every such commission shall thereupon be removed into the said Court of Bankruptcy, and that all further proceedings thereon, shall be thenceforth prosecuted and carried on in like manner, as if they had been, originally commenced therein by virtue of a fiat under the hand of the Lord Chancellor, issued pursuant to this act, save as may be otherwise directed by this act." "That it shall be

^a [We are obliged to the learned Professor for setting us right as to this point. On looking at the *last* print of the bill (6 Mar. 1833) the clause stands as he has sent it to us. It is, perhaps, a little strange, however, that it should ever have stood in its original form. Ed.]

lawful for each commissioner of the said Court, who shall thenceforth act in such commission at his discretion, to appoint some one of the afore-said official assignees, to act with the existing assignees, if any, under such commissions, and to direct the existing assignees, to pay and deliver over to such official assignees all monies, books, papers, and effects whatsoever in their possession or custody as such assignees, and all the real and personal estate of the bankrupt under such commission, shall immediately, on such appointment, vest in such official assignee, jointly with the existing assignees, if any, in like manner as if the proceedings in the said bankruptcy had originally been commenced by virtue of this Act, without prejudice to any action or suit commenced, or any contract entered into, by the existing assignees at the time of the passing of this act." At the choice of assignees, Mr. Fane, the commissioner, thought that he had not any discretion, but that he was bound to nominate an official assignee, and he appointed one accordingly. The creditors objected to this, because it would be attended with an expense of 300*l.* for the purpose of enabling the assignee to make the requisite payment of 40*l.* and a petition was presented, complaining of the appointment of the official assignees, and prayed that the appointment of the official assignee might be rescinded.

Mr. *Swanston*, for the petition, contended that, the commissioner had a discretion which he ought to have exercised, by not having appointed an official assignee which could not be productive of any benefit, as the creditors were ready to pay the 40*l.* required by the statute, without putting the estate to the expense, for this purpose, of 300*l.*

Mr. *Rogers* for the respondents, contended that, as this was an application, not for the appointment of a new assignee, but merely for the removal of the official assignee, the Court had not jurisdiction, and if it had, it would not exercise it at the request of a body of creditors, who, in direct opposition to the intention of the legislature, might make a similar application in other, or in all cases, which would in effect be removing the check intended to be interposed upon assignees.

Per Curiam.—We think that the commissioner had a discretion; that the appointment of the assignee was proper; that it is a mistake to suppose that if he had nothing to do he will receive 300*l.*; and that if necessary, the Court has jurisdiction to remove an official assignee.

Ex parte Ellis, in the matter of Houghton and another, 1 Mont. & Bl. 116.

LIST OF BILLS BEFORE PARLIAMENT, RELATING TO THE LAW.

[It may be of advantage to our readers to observe, at one view, all the Bills which relate to the Law at present before the several

Houses of Parliament: we therefore present the following List, with the names of their respective Proposers, and the several stages at which the Bills have arrived.]

HOUSE OF LORDS.

Common Law.

Title of Bill.	Proposer.	At what Stage.
Suits at Common Law.	} Lord Wynford.	{ Second reading 2d April.
Law Amendment.		
	} Lord Chancellor.	{ Passed.

HOUSE OF COMMONS.

Title of Bill.	Proposer.	At what Stage.
Suffolk Assizes.	} Mr. Wason.	{ Waiting for Second reading.

Conveyancing.

General Register.	} Mr. W. Brougham.	{ To move to bring in on 22d April.
Fines and Recoveries.		
Inheritance.	} Solicitor-General.	{ Before a select Committee.
Dower.		
Curtesy.		
Limitation of Real Actions.		

Equity.

Chancery Lunatics.	} Mr. Lamb.	{ Waiting for 2d reading.

Miscellaneous.

Patents.	Mr. Godson.	{ 2d reading 23d April.
Highways.	Mr. Lamb.	
Dramatic Literary Property.	} Mr. L. Bulwer.	{ Waiting for 2d reading.

PROJECTED REFORMS IN THE CHANCERY OFFICES.

THE Lord Chancellor's new Bill is expected every day to be brought into the House. It has been recently sent to the Master of the Rolls and the Vice-Chancellor for their consideration, and—judging from the instance of the Bankruptcy Court Act—it is not likely that much delay will be suffered to take place.

The abolition of the Six Clerks' Office appears to be determined on, and a very extensive reform in the Registrars' and Mas-

ters' Offices will be affected. The present generation, however, will not derive the full benefit of the measure, because there must be adequate compensation to the holders of the present offices; but we understand that there will be a considerable reduction immediately in the fees to be paid for office copies of bills, answers, &c. and that ultimately, as the pensions die off, the fees will be very small. Instead of the present charge of ten pence per folio, it will probably be now reduced to sixpence, and hereafter to a penny or two pence.

The charge for all orders we expect will be of a stated and moderate amount, and recitals will be excluded. It may be reasonable, however, to make a distinction between orders of course and those which are special, as well as for decrees.

The Masters will probably receive each 2000*l.* a year out of the Suitors' Fund, and 1000*l.* in fees. To make part of the income dependent on the quantity of business concluded, seems to be considered as an essential stimulus to due exertion. This is undoubtedly a safe principle for subordinate officers, but we question its necessity in the case of persons holding the rank of Masters in Chancery. This impulse is not applied in the case of the Judges of the Superior Courts. It must be allowed, however, that as the latter perform their high functions in public, they are differently situated from the Masters in Chancery.

The fees to make up the deficiency of the salary will, in all probability, consist of a stated sum for each report, which, like the decrees and orders, will contain no recitals. Copy money will be abolished, except a small charge for such papers as may be required; and there will be no compulsory expense of copies. The Chief Clerks will probably receive about 1000*l.* a year, and all gratuities will be forbidden.

Several of these, and other intended provisions, will be hailed as a boon both to the suitor and practitioner:—to the former diminishing the amount of expense, and to the latter the inconvenience of making advances and the amount of risk. Whatever tends to curtail the disbursements in a cause must be beneficial to all parties. This is the right way to cheapen justice: abolishing legal sinecures, reducing exorbitant salaries, and allowing the actual labourer an adequate remuneration for his services.

REMARKABLE TRIALS.

No. XXIV.

CASE OF ELIZABETH JEFFRIES AND JOHN SWAN, FOR MURDER. 1751.

Mr. Jeffries had been a butcher in London, but had retired to Walthamstow, in Essex, to live on his fortune; and being a widower, without children, had taken his niece, Elizabeth Jeffries, to live with him. John Swan was brought up to the business of husbandry, but had been engaged in the service of Mr. Jeffries, after having lived with several other people.

A dreadful outcry being heard at Walthamstow, about two o'clock in the morning of the 3d of July, 1751, Mr. Buckle, a near neighbour of Mr. Jeffries, awaked his wife, who said, it is Miss Jeffries's tongue. Mrs. Buckle then going to the window, said, there is Miss Jeffries in her shift, without shoe or stocking, at a neighbour's door. Mr. Buckle going to her, asked her the reason of her appearance in that manner; to which she said, Oh! they have killed him, they have killed him, I fear. On his desiring her to cover herself, she said, Don't mind me; see after my uncle.

Mr. Buckle going to the house, the door was opened by Swan, and the deceased was found lying on his right side, having three wounds on the left side of his head.

Some hours after this, Miss Jeffries desired Mr. Buckle to send information through the country of the murder of her uncle, with an account of such effects as had been stolen; which a Mrs. Martin said, were a silver tankard, a silver cup, and fifteen pewter plates. Mr. Buckle said, if I could light on Matthews, I would take him up. No, said Miss Jeffries, don't meddle with him, for you will bring me into trouble, and yourself too, in so doing. Matthews, however, was taken into custody, and from his apprehension, and other circumstances, the following facts came to light.

Matthews, having travelled from Yorkshire in search of work, was accidentally met on Epping Forest by Mr. Jeffries, who, seeing him in distress, took him home to work as an assistant to Swan in the garden: the agreement being that he should have his food only as a gratuity, but no wages.

After he had been four days in this service, Miss Jeffries sent him up stairs to wipe a chest of drawers, and some chairs; but presently following him, said, "What will you do, if a person would give you a hundred pounds?" He said, any thing in an honest way; on which she bid him go to Swan, and he would tell him. Swan being in the garden, Matthews went to him, and told him the contents of the message; on which Swan smiled, took him to an out-house, and told him, that if he would knock the old miser, his master, on the head, he would give him 700*l.* Two days afterwards, Mr. Jeffries dismissed Matthews from his service, and gave him a shilling; and Swan about the same time, gave him half a guinea to buy a brace of pistols to murder their master. Mat-

thews being possessed of this cash, went to the Green Man at Low Layton, where he spent all his money; which having done, he proceeded towards London; and being overtaken on the road by Swan, the latter asked him where he was going. Matthews said to London: on which the latter took him to Mr. Gall's, the Green Man and Bell, in Whitechapel, where they drank freely till night; and Swan, being intoxicated, swore he would fight the best man in the house for a guinea. He likewise pulled off his great coat, and threw it on the fire; but the landlord taking it off, and finding it very heavy, searched the pockets, in which he found a brace of pistols. This circumstance giving rise to unfavourable suspicion, both the men were lodged in the round-house for that night; and being carried before Sir Samuel Gower the next day, he committed them to Clerkenwell Bridewell, as disorderly persons.

Miss Jeffries, being made acquainted with their situation, gave bail for their appearance; on which they all went to Gall's house in Whitechapel, where she upbraided Matthews with bringing Swan into a scrape. He denied that he had done so; on which she gave him a shilling, and desired Swan to tell him to meet them at the Yorkshire Grey, at Stratford. They went in a coach, and Matthews following on foot, found only Swan there, who gave him half a crown, and bade him meet him at six the next morning, at the Buck on Epping Forest. This he did, and, by appointment, came to Walthamstow on the Tuesday following, at ten o'clock at night.

When Matthews arrived, he found the garden-door on the latch, and going into the pantry, hid himself behind a tub till about eleven o'clock, when Swan brought him some cold boiled beef. About twelve, Miss Jeffries and Swan came to him; when the latter said, now it is time to knock the old miser, my master, on the head. Matthews relented, and said, I cannot find in my heart to do it; to which Miss Jeffries replied, you may be damned for a villain, for not performing your promise. Swan, who was provided with pistols, likewise damned Matthews, and said he had a mind to blow his brains out for the refusal. Swan then produced a book, and insisted that Matthews should swear that he would not discover what had passed: which he did, with this reserve, unless it was to save his own life. Soon after this, Matthews heard the report of a pistol; when getting out of the house by the back way, he crossed the ferry, whence he proceeded to Enfield Chase.

It has been mentioned, that Miss Jeffries was found in her shift, after the commission of the murder. We have now to add, that she screamed out, Diaper! Diaper! for God's sake, help! Murder! Fire! Thieves! The neighbour, Mr. Diaper, saw Miss Jeffries half way out of her window, endeavouring to get down. Mr. Diaper and one Mr. Clarke entered the house and searched diligently; but could find no traces of any person having quitted the house, as there was a dew on the grass, which did not appear to be disturbed.

Swan went to fetch Mr. Forbes, a surgeon at Woodford, who observed congealed blood in the room, and examined the wounds, which, on the trial, he declared to have been mortal. Swan appeared much frightened at the time; and said he wished that he had died with his master: for that he would have lost his own life to save his. As there appeared no marks of any person having been in the house, but those belonging to the family, violent suspicions began to arise. Mr. Jeffries died in great agonies, at eight o'clock on the following evening.

Miss Jeffries, being taken into custody on suspicion, was examined by two magistrates, to whom she confessed that she heard the report of a pistol, and found her uncle murdered. No evidence arising to criminate her, she proved her uncle's will at Doctors' Commons, and took possession of his estate; but the coroner's inquest having sat on the body, and some circumstances of suspicion arising, she and Swan were committed to prison; and bills of indictment being found against them, they were put to the bar, and their counsel moved for an immediate trial. This was opposed by the counsel for the prosecution, on account of the absence of Matthews, who, it was presumed, would become a material evidence. The counsel on both sides used all the arguments in their power; but the trial was deferred till the following assizes.

In the interim, Mr. Gall, of the public-house in Whitechapel, resolved, if possible, to take Matthews into custody; and conversing with one Mr. Smith, he told him that he had seen Matthews come out of the India House, and, on inquiry, it was found that he had engaged to enter into the service of the East India Company, and was at a house in Abel's Buildings, Rosemary Lane. Being taken into custody on a warrant, he was admitted an evidence for the Crown, and the trial of Swan and Jeffries came on at Chelmsford on the 11th of March, 1752, before Judge Wright.

Miss Jeffries fainted repeatedly during the trial, and was once in fits for the space of half an hour. The evidence of Matthews was exceedingly clear; and many corroborative circumstances arising, the jury found the culprits guilty, and they received sentence of death, and were executed on Epping Forest.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.

An order to amend plaintiff's bill, and for defendant to answer amendments and exceptions to former answer at the same time, obtained after the Master's signing his report allowing the exceptions, but before the filing of the report, is irregular.

Sir Edward Sugden moved to discharge an order made, as of course, upon petition at the Rolls, under the following circumstances:—

The plaintiff's attorney attended, at half-past twelve o'clock on the 22d of January, a warrant before the Master, to whom were referred exceptions taken to defendant's answer to the original bill. The Master allowed three of the exceptions, and signed his report at two o'clock. The attorney, as he stated in his affidavit, having obtained the report, proceeded forthwith to the Report Office, but finding it then closed, he went again as soon as it was opened in the evening, and filed the report. In the mean time he presented a petition at the Rolls, praying that the plaintiff may be at liberty to amend his bill, and that the defendant may be ordered to answer the amendments and exceptions at the same time. The prayer was granted, so that the order to amend and to answer was made, was drawn up, filed, entered, and served on the defendants on the same day that the Master's report, allowing the exceptions, was signed, and probably before it was filed—certainly before any certificate of its having been filed was obtained. He submitted, that this expedition, commendable as it was on other occasions, was quite irregular. The practice was to produce a certificate that the report was filed before application was made for an order on the defendants to answer the amendments and exceptions. His motion therefore was, that that order, be discharged for irregularity.

Mr. *Pepys*, *contra*. The report was filed in the evening. The Court could not look to a fraction of a day, but was to infer that the order was not made at the Rolls until the report was filed, which was the fact.

The case stood over from the 21st of February, when the *Lord Chancellor* gave his judgment:—"This was a motion to discharge an order giving liberty to amend, and ordering the defendants to answer the amendments and exceptions together. It appears that the other party went for that order between two and four o'clock, and that it was after seven o'clock when the report was filed—it might have been filed at four o'clock, at the opening of the office for the evening. The petition had the usual allegation, that the exceptions had been allowed, but it did not state that the party had a certificate of the report being filed. The allegation that the exceptions were allowed, can be supported by the fact. The general order of the 29th of October, 1692, reciting 'that it was too common a practice to ground contempts, orders, decrees, and other proceedings, upon reports of Masters of this Court, before the same be actually filed, when the same ought to be filed before any proceedings be had thereon, declared such proceedings to be thenceforward void if such report or certificate be not first filed.' The course here pursued is inconsistent with that order. In the case of *Rushton v. Troughton*, 2 Sim. 33, an order to amend and for the defendant to answer the amendments and exceptions at the same time, was held to be irregular, as being obtained before the filing of the report allowing the exceptions. In the case of *Eyles v. Ward*, 2 P. Wms., 517, it was held sufficient if the Master's report

be filed before any proceedings be had thereon, although not filed within four days after it was signed, as required by the general order. The order in the present case having been obtained before the filing of the report, and being a proceeding upon that report, must be discharged with costs.

Harris v. The Bank of England, at Lincoln's Inn, February 28th. L. C.

King's Bench Practice Court.

INTERPLEADER ACT.—COSTS.

Power of the Court under the Interpleader Act.

J. Jervis shewed cause against a rule for the revival of the original rule in this cause, and the payment by the defendant to the plaintiff, of the costs of the original application to the Court in this cause, and also of the issue which had been tried. The defendant had issued an execution against the goods of a third person, of whom the plaintiff was a creditor. The goods in the possession of the third person were claimed by the plaintiff under a bill of sale. The sheriff applied to the Court for relief, under sec 6. of the Interpleader Act, the 1 & 2 W. 4. c. 58. An issue was accordingly directed to be tried between the plaintiff and the defendant, and the plaintiff succeeded. The object of the present application was, that the plaintiff might obtain the costs to which he was put by appearing to the sheriff's rule, and on the trial of the issue. The Court, however, had no power to entertain such an application, as it had done all that the act authorized it to do, on disposing of the sheriff's rule. The Court was in fact *functus officio*.

Parke, J.—The Court has clearly power to grant such an application as the present, if it sees right so to do. If it had not such a power, the act would be useless. It was the fault of the defendant, that the sheriff's rule and the issue were necessary. Therefore, the defendant ought to pay the costs of the plaintiff's appearing on the sheriff's rule, and of trying the issue.

Rule absolute.—*Seaward v. Williams*, Jan. 23, 1833. K. B. P. C.

INTERPLEADER ACT.—SHERIFF.—PRECEDENCY OF WRITS.

In what case the sheriff cannot be relieved under the Interpleader Act.

The sheriff applied to the Court for relief under the 1 & 2 W. 4. c. 58. § 6. The plaintiff, Day, delivered a *fi. fa.* to the sheriff on the 24th of June, 1832. At the time of delivering the writ, he requested the sheriff not to issue his warrant immediately; but on the 1st of August, he desired that the warrant should issue. On the 3d of August, the plaintiff Lawrence delivered a *fi. fa.* to the same sheriff;

under which, on the 4th of January, the defendant's goods were seized. In half an hour after the seizure, the warrant on the plaintiff Day's writ was delivered to the officer. Day contended, that as his writ had been first issued, he had a right to receive the proceeds of the seizure. Lawrence contended, that there was fraud on the part of Day, and therefore, that the proceeds of the seizure ought to be paid to him. Under these circumstances, the sheriff applied to the Court for relief.

Parke, J.—It does not appear to me that this is a case within the statute. This is a mere struggle for precedence between two execution creditors.

Rule discharged ^b.—*Day v. Waldock. Lawrence v. Same*, Jan. 23, 1833. K. B. P. C.

INTERPLEADER ACT.—COSTS.

Where the Court will not grant costs to any party appearing under the 1 & 2 W. 4, c. 58, § 6.

In this case *Dodd*, in a former term, had obtained a rule on behalf of the Sheriff of Glamorganshire, under the Interpleader Act, 1 & 2 W. 4, c. 58, calling on the plaintiffs, and Mr. Farquhar Fraser, a party claiming mining machinery and goods seized under a *fiery facias* in the cause, to enter into such rule for the protection of the sheriff, under the act, as the Court should order. Mr. Fraser claimed the machinery and goods seized under a mortgage from Cox, the defendant, for 24,000*l.*, and served notice on the sheriff not to sell the goods. On the parties appearing by counsel, the Court ordered that it should be referred to the Master, to hear the parties and decide whether the goods legally belonged to Mr. Fraser, or not; and the question of costs was reserved for the consideration of the Court. The Master accordingly now made his report, which decided that the goods were the property of Mr. Fraser, and were not liable to the execution.

E. Vaughan Williams then moved, that Mr. Fraser, the mortgagee, should be allowed his costs of the proceedings before the Master; and contended, that as his goods had been improperly seized, it was very hard that he should incur costs in procuring them to be restored; and therefore, either the plaintiffs or the sheriff ought to pay him his costs.

Dodd, on behalf of the sheriff, contended, that as he had conducted himself regularly, and was bound to seize under the writ, and could not know that the goods were Mr. Fraser's, it would be contrary to the spirit of the act to fix him with the costs.

Parke, J. said, he thought the sheriff ought not to pay the costs; and there was no blame on the plaintiffs. He therefore refused Mr. Fraser his costs.—*Morland v. Chitty and Cox*, 23d Jan. 1833. K. B. P. C.

^b See *Salmon v. James*, 1 Dowl. Prac. Rep. p. 369.

JUDGMENT AS IN CASE OF A NONSUIT.—REMANET.

How a cause is made a remanet so as to prevent the defendant from obtaining judgment as in case of a nonsuit.

Theiger shewed cause against a rule for judgment as in case of a nonsuit. It was a town cause, and was in the list of last Trinity term. Notice was given to the defendant, that the cause would be taken as undefended on the undefended cause day in Trinity term. On that day, counsel appeared and said the cause was defended. It was accordingly directed to keep its place in the list. After term, it was again put down as an undefended cause, and on counsel again appearing to say that it was defended, it was again directed to keep its place in the list. It had, therefore, been taken twice down to trial by the plaintiff, and made a remanet, and therefore the defendant was not intitled to judgment as in case of a nonsuit; as it was the established practice of the Court, that when a plaintiff had once taken down his cause for trial, and it was made a remanet, judgment as in case of a nonsuit could not be obtained.

Platt, contra, contended, that the cause had not here been taken down to trial, so as to prevent the defendant from obtaining judgment as in case of a nonsuit; because that was only in cases where the cause had been made a remanet, and it could only have been made a remanet when the Court came to it in its turn. Here the Court had not come to it in its turn, and therefore it could not be made a remanet. The plaintiff had merely thought proper to give notice that he would try it as an undefended cause, and when it appeared that it was defended, and of course was directed to keep its place in the list, he called that making it a remanet. If this were to be considered as taking down a cause to trial, so as to prevent a defendant from obtaining judgment as in case of a nonsuit, a plaintiff might in every case give notice that he would take the cause as undefended, and then whatever delay might exist in his proceedings, he could never be subject to judgment as in case of a nonsuit; but the defendant must try by proviso. *Cur adv. vult*.

Parke, J.—I find there is a distinction between the assizes and the sittings in London. A plaintiff does not take his cause down to trial, so as to prevent the defendant from obtaining judgment as in case of a nonsuit, unless it is come to in its turn, and made a remanet. Here it was not come to in its turn, and therefore it was not made a remanet. The plaintiff must give a peremptory undertaking.

Rule discharged on plaintiff's giving a peremptory undertaking.—*Edrupp v. Davies*, Jan. 23, 1833. K. B. P. C.

PLEADING.—COSTS.

Where a defendant is not entitled to costs of a plea.

Blackburn shewed cause against a rule obtained by *Knowles* for reviewing the Master's

taxation. The action was brought by Cartwright, as administrator, to recover money which he had been obliged to pay after the death of the intestate, and therefore declared for money paid to the use of the defendant. The money became due as the arrears of an annuity, of which the intestate was the security, and the defendant the principal. The defendant pleaded two pleas: 1st, the general issue; and 2dly, a set-off for money advanced to the intestate in his lifetime. A verdict was found for the plaintiff, subject to a special case. Upon the argument, the counsel for the defendant began by urging the point as to the set-off; but the Court intimated that it could not be supported, as the claim and the set-off were not in the same right. The counsel then proceeded to the general issue; and upon that succeeded, on account of an agreement, by which the Court thought the intestate had agreed to take upon himself the payment of the annuity. A nonsuit was therefore directed to be entered. The Master, on taxation, allowed the expenses of the witnesses for the defendant to prove the set-off. The present motion had been made to review the Master's taxation, on the ground that those expenses ought to have been disallowed, as the plea of set-off could not be supported. But if the plaintiff had thought proper to demur, those expenses would not have been incurred, as the cause would not then have gone down to trial. As he had not demurred, and consequently the defendant being put to those expenses, the plaintiff ought to pay them.

Knowles, contra, contended, that as the plea of set-off had been determined to be a bad plea, the costs ought to have been taxed as if that issue had been found for the plaintiff; and therefore, that the plaintiff ought not to pay the expenses of the defendant's witnesses.

Parke, J.—If the plaintiff had demurred, he would have been entitled to the costs of the demurrer. As it was clear the plea could not be supported, it is not just that the plaintiff should have to pay the costs of the witnesses in support of that plea. If a verdict had been found on the second plea for the defendant, plaintiff would have been entitled to sign judgment *non obstante vere dicto*, and then he would have been entitled to his costs on that plea.

Rule absolute for reviewing the Master's taxation.—*Cartwright, administrator, v. Cook*, Jan. 24, 1833. K. B. P. C.

STAY OF PROCEEDINGS.

Where a stay of proceedings will not be granted.

Maule having obtained a rule *nisi* for setting aside proceedings for irregularity, applied that the rule might be granted, with a stay of proceedings in the meantime.

Parke, J.—Have you given notice to the other side?

Maule.—We have not.

Parke, J.—Then you can't have your rule, with a stay of proceedings.

Rule *nisi* granted, without a stay of proceedings. — *Fortescue v. Jones*, Jan. 25, 1833. K. B. P. C.

ATTORNEY AND CLIENT.—WARRANT OF ATTORNEY.—FUTURE COSTS.

If an attorney accept of a warrant of attorney from his client, to secure the payment of future costs, it is void.

A rule *nisi* was obtained, for setting aside a warrant of attorney, and the judgment and execution signed and issued on it. The motion proceeded on grounds of alleged impropriety in the obtaining of the warrant of attorney, which were fully answered. It appeared, however, that the warrant of attorney had been given by the defendant to secure the payment of bills of costs to become due, as well as of bills of costs already due, and advance of money already made.

R. V. Richards shewed cause, and contended, that although the warrant of attorney might be void, so far as future bills of costs were concerned, it was not void as to the bills already due and the sums already advanced. The plaintiffs were therefore at liberty to issue execution for the amount of the latter bills and advances.

Thesiger and *White* supported the rule, and cited *Jones and another v. Hunter and another*.

Parke, J.—In that case the warrant of attorney appears, from the report, to have been given for the purpose of securing the payment of future bills only. But here it was given also to secure the payment of costs already due, and advances already made. It does not appear to me, that the warrant of attorney is void altogether, but that it is void only as to that part which was to become due. The Court will exercise an equitable jurisdiction, in order to prevent the client from being forced to give security for future costs; but does not go so far as to make void the security for that to which the client is properly liable. Let the warrant of attorney, therefore, stand as a security for the costs due and money advanced up to the time of its being given.

Rule discharged without costs.—*Holdsworth v. Wakeman*, Jan. 25th, 1833. K. B. P. C.

WARRANT OF ATTORNEY.—EXECUTRIX.

Where an executrix cannot enter up judgment on a warrant of attorney given to the testator.

On an application on the behalf of the executrix of the plaintiff, to enter up judgment on an old warrant of attorney.—The warrant of attorney was directed to the plaintiff only; but the defeazance stated that the warrant of at-

torney was given to secure the payment of 712l. to the plaintiff, his "executors, administrators, and assigns."

Parke, J.—It may perhaps have been the intention of the parties, that the power to enter up judgment should be given to the "executors, administrators, and assigns;" but the only person mentioned in the warrant of attorney is the plaintiff himself. This does not necessarily authorize his "executors, administrators, and assigns," to enter up judgment. These authorities must be strictly pursued.

Rule refused ^a.—*Manvill v. Manvill*, Jan. 30, 1833. K. B. P. C.

PRISONER.—MARSHAL.

How the marshal is to acknowledge a prisoner in his custody.

White had obtained a rule calling on the marshal of this Court to shew cause why an attachment should not issue against him, for disobedience of a rule to acknowledge the defendant in his custody. The defendant being a prisoner in the rules of the prison of this Court, on the 4th of August last a detainer was lodged against him at the suit of the plaintiff; final judgment was obtained on the 10th November, and a side-bar rule in the common form, calling on the marshal to bring the defendant into Court, or give a note in writing, acknowledging the defendant to be in his actual custody, or to shew cause to the contrary, upon notice thereof being given to the defendant's attorney, to be served on the 14th instant, returnable within three days next after notice thereof; and this time having elapsed without the marshal bringing the defendant into Court, or giving a note in writing acknowledging the defendant in his actual custody, or any notice given to the plaintiff's attorney of cause to the contrary, the present rule was obtained in the full Court, at the desire of *Parke, J.*, to whom the matter was first mentioned in the Practice Court.

Mr. Solicitor-General, now shewed cause. This is a very novel proceeding; no instance having ever occurred of the like application. The side-bar rule presented three alternatives—that the marshal should, within three days after notice thereof, bring the defendant into Court; or should give a note in writing acknowledging the defendant to be in his actual custody; or shew cause to the contrary within the time aforesaid, upon notice thereof being given to the plaintiff's attorney. Now it was impossible to pursue either of the two first alternatives; for it appears, on an affidavit of the deputy-marshal, that the defendant had escaped, and that the escape was an involuntary one by the defendant, who had the privilege of the rules. With respect to the last alternative of showing cause, not only does it appear that the plaintiff's attorney's clerk was told, at the

time of serving the side-bar rule, that the defendant had escaped; but a notice was served on the plaintiff's attorney, on the 19th of January offering to shew cause. It is true, that the side bar rule had expired on the 18th; but after this notice the plaintiff's attorney was irregular in making the present application.

Littledale, J.—Not irregular: you ought to have given the notice earlier.

White, contrà.—The plaintiffs are entitled to have this rule made absolute. With respect to the objection of novelty, it does not appear that the marshal has, at any former occasion, disobeyed all the alternatives. And with respect to the excuse here offered, that is not an excuse within the meaning of the last alternative, giving an option to shew cause. It is said that the defendant has escaped; and that it would be hard to the marshal, as far as contempt for suffering a prisoner, who has the privilege of the rules, to escape: but, in the first place, a suffering to escape, whether negligently or voluntarily, is a breach of duty on the part of the marshal, and is *no cause*, within the meaning of the side-bar rule, to excuse a non-compliance with the two first alternatives: such an excuse could only arise from the death of the defendant, or his change of custody, or some other *legal act*; but, next, there is no hardship here in fixing the marshal with the whole debt; for the statute 8 W. 3, c. 27, which in sec. 1, requires the marshal *actually to detain* within the prison or the rules thereof all prisoners either upon contempt, or *seize* process, or in execution, who shall be committed to his custody, provides by § 5, that nothing therein contained shall extend to make void securities for lodging within the rules. The marshal, therefore, may enforce his security to the extent he shall be liable to in this proceeding: with respect to the notice served on the 19th, of the marshal's readiness to shew cause, that came too late; and as to the admission made to the plaintiff's attorney's clerk at the marshal's office, on the service of the side-bar rule, that the defendant had escaped, it was too doubtful whether that would bind the marshal in an action for an escape, to be safely relied on.

The *Solicitor General* here tendered an admission on behalf of the marshal, that the defendant had escaped; and the Court, who were strongly against *White* throughout his argument, discharged the rule on the terms of that admission being embodied in the rule for such discharge.

Rule discharged.—*White v. Stratton*, 31st Jan. 1833. K. B. P. C.

ATTORNEY.—CERTIFICATE.

Want of a certificate on the part of a plaintiff's attorney does not render a judgment signed by him irregular.

On shewing cause against a rule nisi for setting aside a judgment, on the ground that it had been signed by an uncertificated attorney,

^a See *Henshall, executrix, v. Matthew*, 1 Dowl. Prac. Rep. 217.

It was contended, that the fact of the attorney not having taken out his certificate could not render the judgment irregular, although, by so practising, he might be liable to penalties.

Parke, J.—He is an attorney of the Court, and if he has practised without his certificate, that will render him liable to certain penalties. That does not make the judgment irregular.

Rule discharged with costs^a.—*Smith v. Wilson*, Jan. 31, 1833. K. B. P. C.

LANDLORD AND TENANT.—EJECTMENT.—
ASSIZES.

Where a landlord cannot proceed, under the 11 Geo. 4, and 1 W. 4, c. 10, § 36, although his title accrues during Hilary Term.

On a motion for judgment against the casual ejector, the difficulty in the case was, whether it came within the meaning of the 11 Geo. 4, and 1 W. 4, c. 70, § 36. The title of the plaintiff accrued during Hilary Term; and therefore the application was made under the above statute. The property was situated in Middlesex; and the question therefore was, whether the act applied to cases where the trial of the ejectment would not be at the assizes, but at *nisi prius* in Middlesex. The words of the preamble of the section were, "And whereas landlords, to whom a right of entry into or upon any lands or hereditaments may accrue, during or immediately after Hilary and Trinity Terms respectively, are at present unable to prosecute ejectments against their tenants, so as to try the same at the assizes immediately ensuing." The word "assizes," it was submitted, meant *nisi prius* in Middlesex. If it were not to be so construed, the object of the statute would fail. The object of it was to give a quicker remedy to landlords, where their title accrued in Hilary or Trinity Terms.

Parke, J.—I don't think this case comes within the statute. The case contemplated by it is where, unless a speedier remedy is given, the landlord would, when his title accrued in Hilary Term, be driven over to the Summer Assizes to try his cause. But here the plaintiff may try it in Easter Term, without waiting until the Summer Assizes.

Rule refused^c.—*Doe d. Norris v. Roe*, Jan. 31, 1833. K. B. P. C.

INTERPLEADER ACT.—SHERIFF.

Where the Court will not relieve the sheriff under the Interpleader Act.

The sheriff applied to the Court for relief, under 1 and 2 W. 4, c. 58, § 6. The *fi. fa.* came to his hands on the 17th March, 1832.

^a See ——— v. *Sexton*, 1 Dowl. Prac. Rep. 180.

^c See *Doe v. Roe*, 1 Dowl. Prac. Rep. 79; and *Doe v. Roe*, *ib.* 304.

He seized and sold on the 21st March. Notice of the bankruptcy of the defendant, and claim to the goods seized, were given and made on the same day. An application was made to the sheriff by the assignees in the month of June, but no answer was given by him. An action was commenced by the assignees in the month of September. A declaration was delivered on the 16th November, and the sheriff obtained time to plead. On the 29th November, after term, he took out a summons under the Interpleader Act.

Hayes appeared for the assignees.

Watson appeared for the execution creditor.

Evans appeared for the sheriff.

Parke, J.—This act was not intended to afford relief in such cases as the present. Although no time is mentioned in the act, yet the sheriff must come within a reasonable time. But here, the sheriff suffers an action to be brought against him, and keeps possession of the goods for several months. He has made his election, and therefore this case is not within the act.

Rule discharged, the sheriff paying the costs of all parties. *Devereux v. John and another*, Jan. 31, 1833. K. B. P. C.

SMALL DEBTOR.

Where, under the 48 Geo. 3, c. 123, it is not necessary for the debtor's notice to be served on the plaintiff.

Motion to discharge a defendant but of custody, under the 48 Geo. 3, c. 123, who had remained in execution twelve calendar months, for a debt not exceeding 20*l.* The act of parliament required that the notice of the application should be served upon the plaintiff himself; but the plaintiff's residence could not be discovered; and the plaintiff's attorney did not know where his client resided. The notice had therefore been served upon the attorney.

Parke, J.—Take your rule.

Rule granted.—*Wilson v. Mohler*, Jan. 31, 1833. K. B. P. C.

SCI. FA. 1 REG. GEN. H. T. 2 W. 4, §§ 80, 81.

There is no difference in proceedings by sci. fa., against a principal and bail.

Barstow moved for judgment upon a *scire facias* issued by the plaintiff's executors to revive the judgment obtained in this cause. It did not appear that the defendant had been summoned, or had had any notice of the proceeding. But it was contended, that the Rule of Hilary Term, 2 W. 4, § 81, did not apply to the case of a *scire facias* to revive a judgment; and that it appeared by § 80, taken in connection with § 81, to apply only to cases of proceedings against bail, whom it was intended to guard against proceedings which, when taken behind their backs, deprived them of the means of rendering their principal. The reason of the rule did not apply to a case where

the defendant had already had judgment against him.

Littledale, J. (after conferring with the Master).—The language of the Rule is general; and it was not intended to limit it to cases against bail. And there may be good reason why a plaintiff should not avail himself of an old judgment, without, in substance, giving that notice to the defendant which the proceeding, in point of form, indicates to be necessary.

Rule refused — *Jackson v. Elam*, 20th Nov. 1832. K. B. P.C.

NOTES OF THE WEEK.

House of Lords.

LAW AMENDMENT BILL.

Our readers are aware that this Bill has passed through a Committee of the Lords, and undergone some alterations. They consist principally of the following:

1. It was proposed that the Rules and Regulations to be made by the Judges, regarding Pleadings, are not to be binding until after they have been submitted for six weeks to Parliament. The effect of this restriction would of course be, that in the usual course of the sitting of Parliament, no new Rules made during Michaelmas and Hilary Terms could come into operation till Easter, and the greatest inconvenience might be in the mean time experienced. We believe that this alteration was not agreed to, or will not stand as part of the Bill.

2. The Compulsory Arbitration clause has been withdrawn, on the strong objection made to it by Lord Eldon. As confined to shipping partnerships, it might not have been very objectionable; but the principle is a dangerous one, and once admitted even in a limited sense, the advocates for its extension would have gained a considerable advantage.

3. The important clause relating to the admissibility of the evidence of witnesses interested in the result of the verdict, has been modified, on the motion of Lord Wynford. Of the precise nature of the amendment we are not aware; but clearly it was insufficient to provide merely that the *verdict* or Judgment should not be given in evidence against the witness, unless the *evidence* he gave whilst under examination was also protected.

4. We are concerned to learn that the clauses have been struck out authorising the Judges to send issues, in actions for

small debts, where "the trial will not involve any difficult question of law or fact." The report of the debate does not mention this fact, but we understand there is no doubt of it. We are compelled to say to those whom we otherwise highly respect, that the indiscriminating opposition to all change is not only injudicious but most mischievous. It was thus, that in resisting a moderate reform, it became impossible to prevent a sweeping one. We yet hope, that these useful clauses will be restored before the Bill passes the Upper House; and if not, that they will be brought forward as amendments in the House of Commons. The provisions they contain would afford a practicable and easy method of trying the supposed advantages of local judicatures, and especially in diminishing the expense of witnesses, and other charges incident to trials at *Nisi Prius*.

The 45th clause of the Bill proposes to abolish all the Holidays mentioned in the 5 & 6 Edw. 6. (cap. 3.) except Sundays, Christmas Day, and the three following days, and Monday and Tuesday in Easter week. Good Friday is not mentioned in the Act of Edward, and therefore will remain; but Monday and Tuesday in Whitsun week are mentioned in it; and if the clause remains as it is, those holidays will be abolished. Is this intended?

SUITS AT COMMON LAW.

Lord Wynford has again agreed to postpone this Bill, on account of the absence of Lord Lyndhurst. The second reading now stands appointed for Tuesday, the 2d April.

House of Commons.

FINES AND RECOVERIES.—LIMITATION OF ACTIONS.—DOWER.—CURTESY.—INHERITANCE.

These Bills are referred to a Select Committee, consisting of the Solicitor General, Mr. Aglionby, Mr. A. Baring, Mr. Blamire, Mr. Brodie, Mr. W. Brougham, Mr. B. Carter, Mr. E. Denison, Mr. Ewart, Mr. Fazakerley, Mr. Gisborne, Mr. Hill, Mr. Ingham, Mr. James, Mr. Jervis, Sir E. Knatchbull, Mr. Lennard, Mr. Littleton, Lord Lowther, Mr. O'Connell, Mr. Pease, Mr. Pepys, Mr. Serjeant Perrin, Mr. F. Pollock, Mr. Rolfe, Mr. Rotch, Mr. Romilly, Mr. F. Shaw, Mr. Sheil, Mr. Stanley, Mr. Serjeant Spankie, Mr. Strickland, Mr. Tancred, Mr. Tooke, and Mr. Warburton.

CRIMINAL LAWS.

Mr. Ewart has given notice for the 28th May, of a Bill for better defining the Law in cases of Housebreaking and Burglary, and for abolishing Capital Punishments in cases of Returning from Transportation, and of Letter-stealing.

SHERIFFS' REGULATION.

Mr. Fyshe Palmer has given notice of a motion to renew his Bill on this subject.

GLAMORGAN ASSIZES.

Mr. Vivian's Bill for Removing the Summer Assizes from Cardiff to Swansea, has been brought in and read a first time. A petition has been presented against the measure. It is to be read a second time on the 22d April.

LAW OF SEWERS.

A Bill to amend the Law of Sewers has been brought in by Mr. Hodges and Mr. Ayshford Sanford, and read a first time.

SCOTCH LAW.

Notices have been given by Mr. Kennedy of the following Bills:—1. To regulate future entails in Scotland. 2. To alter an Act concerning Tailzies. 3. To grant certain Powers to Heirs of Entail, to relieve such Heirs from Statutory Burdens, and from Debts incurred in Improvements.

LOCAL JUDICATURES.—APPEALS.—CHANCERY REFORM.

THE Lord Chancellor introduced, on Thursday last, two new Bills in the House of Lords: the first for establishing Local Courts, and the second on the Appellate Jurisdiction of the Privy Council. His Lordship also adverted to the Bill which he intended to introduce before the Easter recess, for effecting various reforms in the Court of Chancery, which we have noticed in a previous part of this number.

The following is an abstract of his Lordship's statement on presenting the Bills:

1. Local Judicatures.

Its object was the establishing experimentally in certain districts and counties, but ultimately in all the counties and districts, after its advantages shall have been proved in the experimental districts, local jurisdictions. Over these local jurisdictions, a serjeant-at-law, or a barrister of not less than ten years' standing, should be appointed to preside as Judge. He proposed to give them a power to dispose of cases of debt, and those cases of wrongs which were called actions of tort, in which the redress was pecuniary damages. In his former bill he proposed that the Judges should take cognizance of all actions for debt where the sum did not exceed 100l.; but after much consideration, and frequent communication with the Common Law Commissioners, he was induced to make 20l. the *maximum* sum, at least for the present. It was to be understood that the 20l. was a compulsory provision—that is, that the plaintiff in a cause to that amount should possess the power of bringing it before the local Judges, even though the defendant should not be a willing party.

Another provision gave the parties in these debt and tort actions, (and, indeed, in all actions) the power of submitting themselves to the local tribunal, on both agreeing,—that is, on the mutual consent of the plaintiff and defendant to that purpose. The amount of actions for damages which the local judicature should take cognizance of, should be 50l.; that is, cases in which the damages should be laid at or under 50l.

When the plaintiff and defendant both consented, all actions, without restriction of amount at issue, might be disposed of by the local Judges.

Another provision was, that which would enable either party in an action for debt to compel the other to answer upon oath as to the facts of the case.

There was another provision of this Bill, which would invest the local Judges with the character of Courts of Reconciliation.

The next provision related to the equity jurisdiction with which he proposed to invest the local Judges. In his former Bill he extended this equity jurisdiction to wills and legacies, as well as matters of bankruptcy; but though his own conviction was unaltered, he thought it better to omit it in the present, the rather as it might be more advantageously made the subject matter of a special measure. He proposed, however, in the present Bill, that the local Judges shall be local Masters in Chancery, and local Commissioners of Bankrupts—that is, that they shall, in their several jurisdictions and localities, exercise all the functions which appertain to the office of Master in Chancery, and which appertain to the office of Bankruptcy Judge in the new Bankruptcy Courts. Of course, local Official Assignees should also be appointed.

The last object proposed was to relieve debtors who had gone through their examination, and made a satisfactory disclosure of the whole

state of their affairs, from imprisonment. In this respect the Bill would be an apt precursor to one which he understood was about to be introduced into the other House of Parliament, which was also founded on the recommendations of the Common Law Commissioners, and which would go the length of abolishing imprisonment for debt altogether. The want of proper measures to obtain full and accurate information respecting the property of debtors was severely felt. This want was intended also to be supplied by the Bill. It would be impossible, he thought, to achieve the objects to which he had stated the Bill had reference, except by the establishment of Local Courts.

We reserve for the present our remarks on this measure, and shall put our readers in possession, as early as possible, of a copy of the Bill. The sum to which the jurisdiction is limited, lessens the evil of Local Courts; but can never meet the insuperable objections to the principle of the Bill, as a compulsory measure.

2. Appeals to the Privy Council.

This Bill was intended to effect an alteration in the appellate jurisdiction of the Privy Council; and his Lordship hoped ere long that a similar alteration might be effected in the appellate jurisdiction of their Lordships' House, which he could assure them was a subject of the gravest importance, and one which required the most serious consideration.

3. Chancery Reform.

This Bill would be directed to effect some important reductions in the Six Clerks' Office, the Report Office, the Register Office, and several others. It would also effect the abolition of some useless and cumbrous places connected with the Court of Chancery, to the amount of four or five and twenty; remedy delays in proceedings, and abridge expenses. In short, the Bill would impart greater justice and accuracy to the proceedings of every branch of the Court of Chancery. The following would be the list of the reductions in the offices to which he had alluded:—In the Six Clerks' Office a saving of 29,000*l.* would be effected; in the Report Office, a saving of 4,300*l.*; in the Register Office, of 10,500*l.*; in the Masters' Offices, of 11,157*l.*; which, with the further fees now received in those offices, to be abolished and compensated from the Suitors' Fund, amounting to 14,000*l.*, would make a total saving of 68,957*l.* a-year.

ANSWERS TO QUERIES.

Law of Property and Conveyancing.

DEVISE.—ANNUITY.—CONSTRUCTION. P. 323.

A devise to *A.*, subject to an annuity during the life of *B.*, has been held to give a fee.

Goodright v. Allen, 2 Black. 104. *Baddley v. Leppingwell*, 3 Burr. 1532. *Goodright d. Baker v. Stucker*, 5 T. R. 13. *Andrew v. Southouse*, 5 T. R. 292. If the annuity were only for the life of the devisee, the case would be different. MEDII.

FEME COVERT.—APPOINTMENT.—MARRIAGE. P. 323.

The case put by "Lector" occurred at law, in *Doe v. Staple*, 2 T. R. 684; and in equity, *Hodsdon v. Lloyd*, 2 Bro. C. R. 534; and it was, in both cases, decided that the marriage was a revocation of the will. MEDII.

JOINT TENANCY.—SUICIDE.—FORFEITURE. P. 323.

In *Sir James Hale's case*, Plowd. 253, a man and his wife were joint-tenants of a term of years: the husband committed suicide; and it was adjudged that the whole term vested in the Crown. This case, however, appears to have been decided on the ground that there are no moieties between husband and wife, joint-tenants, each being seised or possessed by entireties; and that, therefore, the husband forfeited the entirety. It would probably be now held, in conformity with the more liberal decisions of modern times, that unless the term was in indivisible things, as a mill, &c. when the King by his prerogative would take the whole, *A.*, joint-tenant with *B.* (not being his wife), and committing suicide, would only forfeit the interest he might have alienated from *B.*, that is to say a moiety.

MEDII.

BEQUEST.—ANNUITY. P. 387.

If this was a personal annuity, the representatives of the daughter are entitled to it on her decease, during the life of *A. B.*'s widow. *Savery v. Dyer*, 1 Dick. 162. J. L.

DIVIDENDS.—TENANT FOR LIFE. P. 387.

If this had been a question of rents of land, the widow would have been entitled thereto, on the ground that the tenants had till sun-set to pay their rents. Applying a similar mode of reasoning to these dividends, it may be said, that they could not be demanded till the hour at which business begins at the bank; and that therefore they must go to the widow. It may be said, on the contrary, that the dividends are payable on the day in question, and that the law does not in general recognize the fraction of a day; and therefore, that the dividends belong to the testator's estate, he having lived to the beginning of the day of payment. In the absence of authority on the point (and I have found no direct authority), I incline to think

that the latter principle would prevail, and that it would be held that the dividends belong to the testator's estate, and do not go to the widow: but I should recommend "Aspiro" to enquire at the Bank of England, and at the Accountant-General's office. J. H.

LEGACY TO WITNESSES. P. 371.

1. Inasmuch as *J. D.*'s will relates not only to *real* but *personal estate*, the legacies given to the witnesses are void. *Vide Foster v. Banbury*, 3 Simon's Ch. Rep. 40. E. M.

2. As this was a will of *real* and *personal estate*, I think it comes within the provisions of the 25 G. 2. c. 6; and that the legacies to the witnesses are consequently void. See *Emanuel v. Constable*, 3 Russ. 436. *Foster v. Banbury*, 3 Sim. 40. J. L.

ASSIGNMENT OF A LEASE. P. 419.

It is quite clear that *C. P.* consenting to *D.*'s assigning over to *H. & Co.*, bars him as to the responsibility of payment of the rent. And with respect to *H. & Co.* assigning to *E. F.* without consent, such consent was immaterial; because an assignee is not bound by a covenant by a lessee, his executors or administrators, not to assign without consent. *Doe d. Cheese v. Smith*, 5 Taunt. 795; S. C. 1 Marsh. 359. And an assignee, according to law, is only liable for the rent which accrues, and covenants broken, during his possession. *Boulton v. Canon*, 1 Frem. 336. And in fact it appears to have been holden in several cases, that when rent became due the day the assignee assigned over, the lessee could not recover against him. *Tovey v. Pitcher*, Carth. 177; 4 Mod. 71; 3 Co. 22; 1 Salk. 81; 1 Freem. 326. But with respect to *H. & Co.*'s liability for the payment of the rent and performance of the covenants, it depends entirely on the words in their assignment; *viz.* if the words in the covenant are, that *H. & Co.*, their *executors, administrators, and assigns*, should pay the rent, and perform the covenants, then they will, I think, be bound in equity for the arrears of the rent left unpaid by *E. F.*; because evidently *H. & Co.* would be deemed in possession of the profits, by receiving the rent of *E. F.*, and paying over the same to *C. P.*, who of course considered them as his tenants; *Treacle v. Coke*, 1 Vern. 166; and unquestionably bound to perform the covenants, if they assign. 2 Danv. Abr. 240. H. A.

Law of Landlord and Tenant.

NOTICE TO QUIT P. 355.

The notice to quit must here expire at the end of the current year of the tenancy. In

cases of tenancy from year to year, where the parties agree to vary the time of the duration of the notice, the notice must, notwithstanding, expire *with* the year of the tenancy, unless the agreement also provides some *other period* for its expiration. The decision in *Pitcher v. Donovan*, 2 Campb. 78, has not been overruled. W. W. B.

QUERIES.

Law of Attorneys.

SERVICE OF CLERKSHIP.

A. B., after serving four years with the attorney with whom he was originally articulated, goes to another attorney, to whom it is previously agreed by all parties he shall be assigned; but the assignment does not take place till *A. B.* has been with the latter attorney for three months. Must *A. B.*, in consequence, serve an additional three months at the expiration of his articles? and if so, must the service be under new articles, or a new assignment from the first master? Or must *A. B.* make a special application to the Court of King's Bench, through counsel, in order to obtain his admission? A. B.

AFFIDAVIT OF SERVICE OF CLERKSHIP.

Can any objection for insufficiency, &c. be made to an affidavit of the execution of articles of clerkship, after it has been passed at the Public Office? A. B.

Practice.

REFERENCE.—REVOCATION.—COSTS.

A. brings an action against *B.*, which comes on for trial; at which it is, by the consent of all parties, referred by an order of the Court to a barrister. At the first meeting, the plaintiff revokes his submission, and applies to have the cause set down again for trial. Can *B.*, the defendant, bring a special action on the case against *A.* for the costs of the day on which the cause was referred, and all the subsequent expenses of, and occasioned by, the reference? And would there be any difference, if the cause had been referred by an inferior Court, *viz.* the London Courts, Palace Court, &c.? ANON.

SECOND ARREST.

A. obtains judgment against *B.*, and issues a writ of *capias ad satisfaciendum* against him,

and he is arrested. Immediately afterwards, an irregularity is discovered in the writ. The plaintiff's attorney, therefore, orders the sheriff's officer to discharge *B.* Can the plaintiff issue another *capias ad satisfaciendum* against *B.*, and arrest him, or must the plaintiff bring an action on the judgment? M.

Common Law.

STATUTE OF FRAUDS.

A. lets on a verbal agreement to *B.*, for a consideration of 500*l.* for six years, certain lands, &c. at a reduced annual rent. Six months previous to the expiration of the third year, *B.* receives a notice to quit at the end of that year. Must *B.* give up possession? If so, can he obtain any of his consideration money back again? In fact, what remedy has he against *A.*? A. N.

Law of Property and Conveyancing.

MORTGAGE COVENANTS.—SALE.

What is the proper form of covenants to be used in a mortgage with trusts for sale, which does not contain a proviso for redemption? Should the covenants be absolute, as in common mortgages, or qualified? As I have known a difference in the practice of professional men as to this point, I should be glad of a reference to some authority on the subject.

X. Y. Z.

EXECUTION OF POWER.

A. bequeathed certain property and legacies to trustees, in trust for certain persons; and directed, that if either of his trustees should die, a new trustee might be appointed by the executors or administrators of him so dying, in the usual way; and that the trust estates, monies, and premises, should in that case be assigned to such new trustee, upon the trusts therein mentioned. One of the trustees died, and his executors nominated another; but who (with the other trustees) took upon himself the trusts affecting a *specific portion* of the bequests only. Is this appointment a good execution of the power? A STUDENT.

LEGACY.

A., after charging his real and personal estate with the payment of his debts, gave to the children of *B.* 1000*l.*, to be equally divided between them, payable when the youngest attained twenty-one; and devised the residue of his real estates, subject to the payment of such part of his *legacies* as his personal estate should not be sufficient to discharge, to *D.* in fee. The personal estate will not cover the legacies. *D.* has sold his estate, and the legacy still remains unpaid. Are the executors, the residu-

ary devisee, or the purchasers, responsible? And if either of them, through what channel, whether law or equity, should the case be proceeded with, so as to carry the testator's intentions into effect? A STUDENT.

DEVISE.—LEGACIES.

A. devised to his wife (whom he appointed sole executrix) certain freehold property, to hold to her heirs and assigns, for the term of her natural life; and it was his will that all his *real and personal estates* should be sold and converted into money immediately after his decease; and declared that her receipt should be a sufficient discharge to purchasers, and they should not be answerable for the application thereof: he then gives certain legacies, which are directed to be paid after the decease of his wife. The personalty is insufficient to pay the legacies. What estate does the wife take? And is the real property chargeable in consequence of such deficiency? A STUDENT.

Law of Landlord and Tenant.

RENT.—DISTRESS.

A. rented lodgings of *B.*, for which there was twelve months' rent due to *B.* at Christmas 1830; at which time *A.* agreed with *B.* to rent one room only in future, and to pay him weekly, provided *B.* would suffer the rent due on the old account to stand over: a new tenancy therefore commenced; and the rent for the one room has been regularly paid. Can *B.*, the landlord, now distrain the goods of *A.* for the one year's rent up to Christmas 1830? or is his remedy by action? J. C. S.

THE EDITOR'S LETTER BOX.

The letter of "An Attorney," on the *Certificate Duty*, shall have immediate attention. On receiving the sketch of a petition, we shall gladly assist the object; and we invite our correspondents to lend their aid, and the sooner the better.

To T. J. F.—We are not aware of any intention, at present, to throw open the *Marshealese Court* to practitioners in general, in the manner of the Sheriffs' Courts.

The communication of "A Subscriber," and the paper on the Stamp Duties, will probably appear next week.

R. M. will please to state the substance of the will on which his question arises: we cannot insert the whole of the document.

The queries and answers of J. S.; Mancunians; C. M. W.; Delta; and W. W. B., have been received.

The Legal Observer.

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1833.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

KING'S COLLEGE.

LECTURES OF PROFESSOR PARK.

No. XI.

PRELIMINARY LECTURE TO THE COURSE ON THE PRACTICE OF CONVEYANCING *.

GENTLEMEN,

As the present course is short, it is not my intention to occupy much of your time with preliminary matter; but as I find there are some individuals in the class who are as yet mere novices, and have not even witnessed the mechanism of a solicitor's office, or conveyancer's chambers, and as it is my duty, as far as possible, to adapt my instructions to the

* The following Lecture was the first of the actual series on the Practice of Conveyancing, to which the Lecture printed in our Supplement for November was the *public* introduction. As the matter contained in it is general and preliminary, we have availed ourselves of the Author's leave to print it.

As a misapprehension appears to exist amongst some of our correspondents, with regard to the Lectures of Professor Park, published in this work, we take this opportunity to observe, that we have never professed to publish more than the *public* Introductory Lectures, and those Lectures, of course, which were confined to general and preliminary matter, and were, in that sense, Introductory. In the course on Scientific Law, we understand that the original intention was that these Preliminary Lectures should be much more numerous; but that they were suspended by the wish of the class, to arrive without delay at the more practical part of the course. Indeed it seems, from the experiments at the London University and King's College, that Jurisprudence cannot be taught in this country in the Lecture Room.

NO. CXXXIII.

state of information of all the members of the class, I must claim the indulgence, for a short space of time, of those to whom I shall be saying nothing but what is mere alphabet, for the sake of their less initiated juniors.

The duty of the conveyancing draftsman is to prepare drafts of deeds and other instruments relative to property and civil rights; in fact, to prepare every species of instrument which is not of a strictly forensic character, with the exception of some few mercantile instruments, such as marine insurances, bottomry bonds, charterparties, &c. which are generally managed by the underwriters and notaries in the city, and at the outports, by means of printed forms, adapted to the circumstances, with pen and ink, after a way of their own. This separation of the commoner mercantile instruments from the province of the regular draftsman, though perhaps unavoidable, has been any thing but beneficial to those instruments. You will find it observed, in the second volume of Chitty on Pleading, p. 179, that the instrument in common use for marine policies has always been considered as ill-framed. Indeed it is declared upon with a sort of *apologia*, as an instrument "according to the usage and custom of merchants;" and the manner in which the blanks in such instruments are filled up, and the qualifications introduced, generally violate all strict grammatical construction, and can only be legally understood by a sort of judicial adoption of the jargon of mercantile men and notaries. For example, the general terms of the insurance in the printed parts of the policy, are qualified merely by the insertion, either in the body, or at the foot of the policy, of the words "on ship," or "on goods," or "on freight," &c. which is something, as if a conveyancer should keep a general form of conveyance, containing sweeping descriptions in the parcels,—and qualify that by writing a description of the property really conveyed, in the margin.

On the continent the duty of the convey-

ancer is performed exclusively by the persons called notaries: in this country it is distributed between three different descriptions of persons—first, attorneys, or solicitors; second, conveyancing counsel, and certificated conveyancers, who act *quasi* conveyancing counsel, although not at the bar; and third, certificated conveyancers, who do not act *quasi* counsel, but *quasi* solicitors.

The first and third transact with the actual clients, and prepare not only the drafts, but the ingrossments; the second transact with the first and third only, being excluded by the etiquette of the profession from receiving business from the actual clients, and from performing the mechanical parts of conveyancing, such as ingrossing, &c.

It is true, conveyancing is no necessary part of the function of an attorney or solicitor, those terms being confined, in their proper import, to those who act for others in conducting causes; the former at common law, the latter in equity: yet the habits of this country have united the two vocations, and although there are some attorneys whose business consists almost exclusively of common law practice, I am not aware that there are any who refuse conveyancing. Indeed it is generally considered the most profitable part of the business of an attorney or solicitor.

Gentlemen,—It is the business of attorneys and solicitors, and of certificated conveyancers who act *quasi* attorneys and solicitors, to take instructions from their own clients for drafts, and then either to prepare them, or have them prepared, in their own offices, or to send instructions to conveyancing counsel, or to certificated conveyancers who act *quasi* conveyancing counsel, for such drafts, which instructions are commonly in writing, stating the names of the parties, or persons concerned, the circumstances or facts which have occurred, the transaction for which the draft is wanted, and the mode in which it is proposed to carry it into effect.

The mere operation of taking instructions from the actual client is not to be considered a passive or mechanical one; for you have, in almost all cases, to help your client to find out his own meaning, and then to direct his vague ideas into legal channels for their accomplishment. You have to suggest what he overlooks; to inform him where the law imposes restraints upon his objects; and sometimes to discuss with him the expediency of adopting this or that mode of carrying the transaction into effect.

It is true all this does not occur in every transaction. A gentleman who has purchased an estate, or the lease of a house, does not ordinarily give any specific instructions to his solicitor for the conveyance or assignment, the facts themselves sufficiently amounting to instructions; but if he has bought for any particular purpose, as for a partnership, or a provision for a child, or in compliance with a covenant to settle, &c. you will then have to confer with him upon the mode in which the transaction is to be effected. So, if he has

purchased an estate, and has to raise part of the purchase money on mortgage of it, it will be proper that you should ascertain whether he has any objection to disclosing that circumstance to the vendors, because that may much influence the question, whether the conveyance and mortgage are to be effected in one deed (which must necessarily disclose the transaction of the loan to the vendors), or in separate and successive deeds, by which that disclosure may be avoided.

But it is more especially in wills, settlements, and transactions relative to partnerships, and trade, and family arrangements, that your skill is called for in taking instructions, and modelling the transaction; and here a very extensive knowledge of the law is frequently required.

In the course of these Lectures, I shall mention, as opportunity offers, several of the points which arise in taking instructions of this character. I will here, however, make a few general observations on the subject, which occur to me at the moment.

You will find, in the course of your future professional experience, that men in general are very ignorant of the wide difference which the law of England makes between *real* and *personal* estate; that they speak of *heirs* as the persons who are to take, indiscriminately, real or personal property upon their death. You are not therefore to suppose, that a man who is giving you instructions for a settlement of personal property, has any particular intention, because he tells you that the property is, on his death without issue, to go to his *heirs*. It might, indeed, by a special limitation, be made to go to his heirs—to that person or persons, namely, who would be his heir or heirs at law, in the case of a descent of land; but all that he means, is to express that it is to go, in the event supposed, as it would have gone, in case no settlement had been made; which you will effect, either by limiting the reversionary interest to him, his executors, administrators, and assigns; or, in some cases, by giving it to such persons as he shall appoint, and in default of appointment, to his next of kin: of which I will explain the objects when we come to speak about settlements.

Another general observation that occurs is, that you will find people in general totally in the dark, as to the limited extent to which real property can be locked up, or entailed, in this country.

Many of them suppose that property can be perpetually entailed on a family; an idea which has probably been generated by the circumstance, that the great estates of the titled aristocracy of this country do in point of fact descend with the title almost *in perpetuum*, merely in consequence of a succession of settlements voluntarily made by each generation, and influenced by the *esprit du corps* of the aristocracy to connect the enjoyment of the hereditary estates with the possession of the title.

Many persons suppose, that by merely giving an estate to a man and *his heirs*, you

are confusing it to his own family; from not being aware of the unqualified power of alienation conferred by such a limitation: and it is not at all uncommon with ignorant testators, to direct an estate which they have given to a particular individual, "to go in heirship for ever"—meaning, to be kept in that family for ever. In fact, this kind of people use the word *heirs* for exactly the opposite purpose to that for which a lawyer uses it; for if they wish an estate to be given to a man absolutely, without any restraint (which would be accomplished, in point of legal effect, by giving it to him and his heirs), they will give it, or instruct you to give it, to the individual merely by name, without saying more; whereas if they wish it to devolve upon his death to his kindred unaliened, the idea of *heirs* then presents itself to their minds, and they tell you to give it to him and his heirs—meaning that his heirs should take after him as *personæ designatæ*. It is not that they mean to exclude all but lineal descendants, although they would of course have them take first; but that they mean there should be a descent, or a succession of descents, either to lineal or collateral heirs, without any power of alienation; and certainly the natural meaning of a gift to a man and *his heirs*, when we come to consider it, is that of a gift to him personally, and then to those, personally, who answer the description of heirs. Now this is an intention which the law of England does not allow you to accomplish, because it will not allow you to restrain alienation beyond one generation; but you may accomplish it partially by limiting the estate in strict settlement, with remainders in strict settlement to the person's collateral relatives.

You will observe from what I have said, that whenever an unlearned client talks about giving landed property to a man and *his heirs*, or giving to the heirs substantively, you ought to ascertain what he means by *heirs*, by asking him whether he wishes that it should be kept in the family.

Gentlemen,—Besides the preparing of drafts, the conveyancing counsel has to advise upon abstracts of title; namely, abridgments of the title deeds of an estate, drawn up in writing, in the form of a brief, and put into the hands of the purchaser of an estate, to enable his counsel to ascertain whether there is a probability that he will have a right to keep possession of that estate against every body else, and whether or not there are any burdens or incumbrances upon that estate which ought to be paid off or extinguished, before he finally agrees to his purchase.

These abstracts are likewise used by the conveyancer, in preparing the draft of the conveyance of the estate purchased, to enable him to ascertain what persons ought to join in the conveyance, and in what manner they are interested, that he may make them convey, consent, release, &c., according to the rules of law.

It is only in the latter point of view, indeed, that he is concerned with abstracts, as a con-

veyancing draftsman, which is the aspect in which we are here regarding him.

The more ordinary routine of drafts may be considered as dividing themselves into—

1st, *Conveyances*; or instruments passing, transmitting, or conveying some kind of property, or interest in property, from one man to another, and which are principally on occasion of purchases.

2dly, *Mortgages*; or deeds which, though strictly conveyances in form, in object and intention, are only securities for money.

3dly, *Settlements*; or instruments making new arrangements or distributions of property among families, as upon marriage, separation, &c.

4thly, *Agreements*; or instruments to afford evidence of some undertaking or proposal between two or more persons, as in partnerships, agencies, contracts for sale, &c.

Gentlemen,—The original object of the application of writing to legal contracts, was to furnish evidence more permanent and certain than mere present notoriety, of the terms and nature of those contracts. To a great extent this still continues to be the leading object of written instruments; and conveyancing may, in one sense, be defined to be the art of framing written evidence of the legal contracts of mankind.

But in this country, it is not only as evidence of contracts, that written instruments have their value; besides being of the matter of *proof*, written documents are, in the larger proportion of instances, of the matter of *instrumentality*. The word "*instrument*," technically applied to them, does, in its strict sense, point out the degree of operative value affixed them; since the law of England has, for purposes of convenience and policy, denied to men the capacity of performing certain actions, but through the fictitious agency of written language. Not only is the written instrument testificatory of the act of the party, but it is in the fiction of the law, the very act and deed itself.

To express this idea more clearly by an example: it is notorious that in the common understanding of mankind, when one person presents a bounty of any description to another, the thing presented is the gift; but in the eye of the law, the gift does not so much imply the thing presented as the written language by which the act of presentation is testified; that is to say, the law does not, generally speaking, admit the existence of any other mode of effecting a bounty than by the execution of a particular kind of writing; and therefore it considers that writing the gift, and calls it such. Thus lawyers talk of the "*language* of the gift;" and thus, too, they talk of lands "*passing*" by such and such a deed; and of their "*not passing*" by it, in consequence of its being defective or vicious in some essential circumstances, although the lands are contained in it in point of expression; thereby shewing that the written evidence of the contract

may be existent, while the instrumentality of the writing so evidencing it is inert.

Thus, too, the "operation" of a deed is spoken of; meaning, not its consequence or effect, but its positive and instantaneous action.

With regard to the larger portion of legal writings, therefore, they are to be considered as having a twofold operation and value; they are both instrumental and testificatory; but it is not in all the transactions of mankind that the law has imposed the shackle before alluded to upon the actions of men, and therefore there is a considerable portion of legal instruments which have no other operation or value attached to them than that which they convey to the common understanding of mankind; namely, permanent evidence of a given transaction, undertaking, or arrangement.

Of this description some are necessarily reduced to writing, to conform to the positive requisitions of the law; not because they have, according to the fiction just adverted to, an inherent instrumentality, or are the legal representatives of the act testified, but because the law denies to some kinds of contracts, not the right of being *executed* only by written instruments, but the right of being *evidenced* by any but such. Here, then, is a second class of writings. Those which are made in pursuance of the requisition of law, which requires the *evidence* of particular kinds of contracts to be by writing: and these are not, strictly speaking, instruments, though commonly so called; they are only documents.

A third class, are those which are not the consequence of any condition annexed to the contract by law, requiring it to be evidenced by writing, but of the convenience and policy of mankind, voluntarily resorting to written language for the preservation and certainty of the contract.

The difficulty of framing written instruments for the various purposes above mentioned, and the consequent necessity of making it an art or profession, arises from many circumstances; as,

First,—The complicated and various natures of the transactions of mankind, in their dealings one with another, and the natural inaptitude of language to express, in a manner incapable of tergiversation, the exact amount and particulars of such transactions, with a view to all possible shapes they may assume, and questions which may arise upon them.

Secondly,—The fictitious effect which is engrafted upon such writings by the law, under the doctrine already adverted to, of operative instrumentality, adding to the nicety of expressing the intention of the parties, that of applying an infinite number of artificial rules respecting the modes and means of instrumentality, varying with each particular case.

Thirdly,—The applying a multitude of other rules of law, not relating to the subtlety of instrumentality, but to the various restrictions and conditions imposed by the law upon the dealings and transactions of mankind, to the stated formularies of those transactions, including the knowledge of all the varieties of

modes by which the restrictive consequences of the law may be avoided or qualified by the shape of the transaction.

Fourthly,—The circumstance that a large proportion of deeds, and parts of almost all, are made with a view to remedies to be had upon them in case of infringement of contracts, or other invasion of rights, and the consequent necessity that they should be framed with some reference to the artificial rules of pleading, and the nature of the remedies by action, &c.

Looking at it in this view, it will be seen, that the attainment of the art of drafting is identified in the closest degree with universal proficiency in the laws of property, and that the progress in both must go hand in hand.

Much has been done, however, to aid the progress of the novice, by the establishment of known forms, applicable to most purposes of ordinary occurrence, and which have stood the test of experience, and been remodelled from time to time, as defects or insufficiencies have been discovered in them. The precise language of these forms varies more or less with almost every practitioner; but in substance they are generally the same.

The operation of drawing, therefore, in modern practice, is little more than the skilful combination and application of these forms to the individual transaction. The recitals, or introductory part of a deed, is generally almost the only part of it which is purely discretionary; and even in this, the pupil is commonly assisted, at the present day, by a MS. selection of forms of recitals, denominated a "recital book."

Most gentlemen who have gone through a conveyancer's chambers are in possession of a MS. recital book; but to those who have not this convenience, and who expect to be largely occupied in drafting, I cannot too strongly recommend to possess themselves, if possible, of a book of this description, either by having that of some other person copied, or by forming one themselves by alphabetically arranging recitals, selected from drafts prepared by counsel. I often found, when I first commenced practising, that the very frame of the draft itself (which is what puzzles a young practitioner most) would be suggested by the related recitals in my recital book; and I have frequently heard equity draftsmen, in an early stage of their practice, declare, that the "recital book" was the most useful book they had. They of course spoke of one upon a large scale, in which the recitals were numerous, and almost complete.

Till within the last thirty or forty years, it was, I believe, the almost universal plan to draw from precedents; that is, from MS. or printed collections of drafts used on former occasions. The practice, however, first introduced, I believe, by Mr. Preston, of having the different clauses of deeds separated and arranged in books, each clause having most of the varieties of which it is capable written on the opposite page, by way of notes, has much exploded the practice of drawing from pre-

cedents among well educated draftsmen ; since no one MS. precedent can furnish more than the particular varieties which were incident to that transaction. Precedents are now used, therefore, among correct draftsmen, more to determine the *frame* of drafts, and to suggest clauses and precautions, which might have escaped attention, than as the *materials* for drafting, which are better found in the form book.

INSTRUCTOR CLERICALIS.

No. III.

PRACTICAL RECOMMENDATIONS FOR THE CONVEYANCING DEPARTMENT OF A SOLICITOR'S OFFICE.

We close, for the present, this short series of papers, by a practitioner of very general experience, with the following hints, which, though concise, we trust will be useful at the commencement of the practical career of artied clerks, in the department to which they relate, and in which they usually require more assistance than in any other.

1. The young practitioner is exhorted not to be disheartened by the first difficulties which he will unavoidably meet. They will assuredly be overcome by moderate diligence, steadily applied.

2. Acquire, as soon as possible, a clear and distinct conception of—

What a deed is.

What the parts or divisions of a deed are.

How many sorts of deed there are.

What the denominations or descriptions of the different sorts of deeds are.

What the leading or distinguishing quality of each particular deed is, and for what purpose it is used.

What the form of each particular deed is, and what are the parts or divisions of it.

What an abstract is, and what are the essential practical points to be attended to and observed in preparing an abstract.

When this conception is perfect, the confusion of ideas, which will arise from considering the whole of a deed together, without referring to or analyzing the distinct parts or divisions of a deed, as well as from not discerning or distinguishing between one description of deed and another, and the use to which each deed is applied, will be avoided ; and the consequence will be—facility in comprehending, drawing, and abstracting deeds.

What is a deed ?

This question may be answered by referring to the 20th Chapter, on Alienation by Deed, in the 2d vol. of Blackstone's Commentaries ; to Sheppard's Touchstone ; 4 Cru. Dig. ; and to Tomlin's Law Dictionary ; the latter of which will explain the terms used in the preceding reference.

What are the parts or divisions of a deed ?

This question may be answered by the same references : but in order to impress the parts of a deed in the mind, let each part be separately noted in writing, and studied, after having read over the whole deed.

How many sorts of deeds are there ?

This question may be answered by the same reference.

What are the denominations or descriptions of the different deeds ?

This question may be answered in like manner : but let the denomination or description of each deed be noted in writing, and fixed on the memory.

What is the leading or distinguishing quality of each particular deed, and for what purpose is it used ?

This question may be answered in like manner ; and the use of each deed should be most anxiously studied.

What is the form of each particular deed, and what the parts or divisions of it ?

The form of each deed may be seen, either among the drafts in the office, or in the works containing precedents of conveyances. The same description of deed never varies in its outline or general form ; and it is the outline or general form which must be well digested and well understood.

Let each form of deed be copied ; the whole and each part studied : and let each part or division be copied in separate paragraphs, in order that the points of the deed may be easily discerned. In selecting the form of a deed, be careful to avoid being entangled with special or particular statements or recitals, or with special or particular qualifications or conditions, or with special or particular provisos or covenants. These always vary according to circumstances ; and it will hereafter be found easy to add them to the general form of a deed, as each particular case may render necessary. Many individuals who are seeking to learn the form of deeds, confound themselves by not keeping the outline or general form and principle of the deed steadily in view. They enter into minute and particular facts and circumstances, for which there can be no exact precedent ; and this, so far from assisting the memory, and so far from fixing the principle of the deed in the mind, tends

to confusion. It is the right comprehension of the deed generally that must be sought; and when this is attained, common sense and experience will point out what additions are proper and necessary to be made, when there shall be occasion.

To fix the form of each deed, and the form of each set of covenants, in the mind, is of greater importance than multiplying copies of the same deed and covenants. While copying abstracts or examining deeds, direct your attention to the principle and meaning of the deed, and to the different parts and divisions of it; and the frequency of copying abstracts and examining deeds, will render the abstracting or drawing of a deed quite easy.

What is an abstract, and what are the essential and practical points to be attended to in preparing an abstract?

This question will be answered by referring to Mr. Preston's book on Abstracts, and to abstracts which have been prepared; and in order that the essential points may be fixed and established in the mind, let them be noted in writing, and let them be the subject of continual thought, deliberation, and reflection, when copying, examining, or preparing an abstract.

PARLIAMENTARY REPORT.

House of Commons, Tuesday, February 26th.

CRIMINAL LAWS.

Mr. *Hume*.—I have a petition of great importance to present to the House. It is from several of the inhabitants of the Metropolis and its vicinity, and prays for a mitigation of the criminal code. It was agreed to at a large public meeting held at Exeter Hall, and is signed by 5330 persons, of all religious sects. It appears to me, that the great object in view in inflicting punishment is the prevention of crime, and the consequent protection of life and property. Now if the existing laws are not sufficient for these purposes, but have a tendency rather to increase than diminish crime, that bare fact will be sufficient to shew that they require revision. It is almost needless to state, as a general principle, that nothing tends more to check crime than the *certainty* of punishment—that this is a much more effectual check than *severity* of punishment. As the law at present stands, the chances of a criminal's escape in capital cases is almost as much as five hundred to one; and this circumstance is en-

tirely owing to the severity of our criminal code. The petitioners very properly state, that they "are deeply impressed with the opinion that the efficacy of criminal laws depends less upon the severity of punishment than the certainty of infliction; and that laws which cannot be carried into execution without shocking the feelings of society and exciting sympathy for the offender, are contrary to reason, inconsistent with morality, and opposed to the interests of justice." Such is the severity of the English laws, that it is with the greatest difficulty persons are induced to come forward and prosecute those who have violated their property. It very often happens, that the injured party comes forward and exerts himself to the utmost to save the offender from the law, which would inflict capital punishment upon him. If capital punishment was entirely abolished for offences against property, the chances of escape would be a hundred fold less than they are at present. The petitioners have not taken up the subject lightly, but have considered it with the greatest attention; and they now wish to bring it under the attention of the House, with the view of having the criminal laws, which they truly state as a disgrace to the country, greatly modified.

I am happy to find, that within the last year or two an association has been formed, with a view to endeavor to procure an abolition of capital punishment for all crimes except murder; and that the members of it have been collecting facts, with the view of shewing the great advantage that would result from carrying their views into effect. It is my firm conviction that the commission of crime would be less frequent, were the punishment less severe.

The petitioners state, "That the criminal laws of England are of a character so vindictive and barbarous, as to be utterly incapable of uniform execution; and that, consequently, under the present system, the lives of men depend less upon the precise and express provisions of the Law, than upon the temper, feeling, or caprice of a Judge, or a Secretary of State; whence it arises, that all the assizes and circuits throughout England afford examples of inequality of punishment, and practical proofs of the arbitrary discretion exercised in the selection of victims for the altars of sanguinary justice.

"That the excessive severity of the law operates to the total impunity of a great proportion of offenders, by deterring humane persons from prosecuting, and by

holding out a temptation to jurors to violate their oath, rather than be accessory to judicial murder."

The petitioners are then not only justified in calling, but they are bound to call, upon this House to alter, without delay, the present sanguinary laws, which are perfectly unfit for the present enlightened age. It appears, that in no other country in Europe are the laws so severe as in this; and although we may surpass other nations in intelligence and civilization, our criminal laws are far worse than any to be met with elsewhere. In other countries, the crimes of murder, treason, and arson alone are punished with death; and I am of opinion, that the infliction of the extreme penalty of the law should not take place for any other crime. I am satisfied, that any man who considers the subject attentively, and who is able to form just views, will come to the conclusion that a more efficient protection would be furnished, both to life and property, by a mitigation of the severity of our punishments for offences. In America, where the punishment of death is inflicted for murder only, we know that laws are more efficient for all the usual purposes of society than they are in this country. In England, criminals are liable to the same punishment for burglary as they are for murder. Now I am of opinion, that the law which inflicts the same punishment for a violation of property, as for the commission of murder, holds out an encouragement for the perpetration of the latter crime. A robber is induced to commit murder, with a view of preventing detection, when he finds that the commission of the latter crime will not at any rate add to his punishment, whilst it may possibly prevent the discovery of the robbery he has committed, and so save him from punishment altogether. I am sure that the great rigour of the law tends much to lessen the security to property; as criminals calculate on the unwillingness of those whom they have injured to come forward to prosecute, and also upon the dislike of jurors to return a verdict which is likely to lead to the infliction of the extreme severity of the law. There are numerous instances of this; and they who read the newspapers cannot be at all at a loss to imagine how many do occur. I know that the great objection to the relaxation of our criminal code, is the want of a good system of *secondary punishments*; but I trust that ere long this difficulty will be obviated. I need not say that I concur in the prayer of the petition; and I hope, that before this Session of Parliament is over,

an act will be passed abrogating the punishment of death in all cases but those of murder, arson, and treason. I am convinced, that if this were done, the prosecutions for crime would increase, and their amount be greatly diminished.

The petition was then brought up and read.

Mr. Pease.—I most cordially concur in the prayer of this petition, and I think that our penal code is not only a disgrace to the character of the British legislature, but a disgrace to the character of this nation as a Christian country. I hope that measures will speedily be resorted to, which may wipe away the stain that attaches to the character of the country, on account of the state of the existing law. I think that we step aside from, and sacrifice the great principles of our religion, in taking away the lives of individuals, and more particularly at the short notice of forty-eight hours, which is the only time allowed to those criminals convicted of murder. As for their final preparation, I am sure, that if a longer time were given, and the public mind allowed to dwell on the nature of the punishment and the state of mind of the criminal, all feelings of revenge would give way to those of a more humane character.

I am certain, that no one who feels strongly for his fellow man, and who considers the condition of mind of that criminal, who is thus sent by the precipitate execution of the law to appear at the Bar of Omnipotence, can regard this punishment with other than the most painful feelings. Here we have a man, for example, who, a few hours before, has heard his earthly judge dwell on the immense responsibility of human existence, sent into eternity, certainly not in a state of fitting preparation. The great object of human punishment is, to excite such terror in the minds of others as may deter them from the commission of crimes similar to those punished, and to promote the moral reform of the community. As regards the former, the *uncertainty* of punishment removes the terror; and capital punishment, when it is inflicted, precludes the possibility of reform. I am sure, that the more the attention of the House and of the Country is directed to the subject of capital punishment, the stronger will be the feeling against it. I trust that, ere long, we shall adopt such a system, that at the same time we reform the criminal, we infuse a salutary terror into those who would be evil doers.

[To be continued.]

REVISING BARRISTERS.

An Account of the Number of Barristers employed for the purpose of Revising Lists of Voters, under the Act 2 Will. IV, c. 45; stating the Name of each Barrister, and of the District or Place where employed; together with the Number of Days employed, and the Amount of Money paid or payable to each, by order of the Lords of the Treasury, as Salary for the said Duties, and for Travelling and other Expenses incurred by him in respect of such employment.

BARRISTERS EMPLOYED.	DISTRICT.	Number of Days.	Salary.	Travelling and other Expenses.	Total.
J. B. Munro, Esq. -	{ County of Bucks and borough of Aylesbury, Buckingham, Great	9	£ 47 5 0	£ 100 10 6	£ 147 15 6
F. Gunning, Esq. -	{ Marlow and Chipping Wycomb -	10	52 10 0	20 7 5	72 17 5
Andrew Amos, Esq. -	{ Borough of Birmingham -	5	26 5 0	26 14 6	52 19 6
J. Hildyard, Esq. -	{ -	3	15 15 0	12 17 6	28 12 6
John Evans, Esq. -	{ Counties of Brecon and Radnor, and boroughs of Brecon, Rhayader,	13	68 5 0	35 19 10	104 4 10
Henry Allen Wedgwood, Esq. -	{ Kevenlue, New Radnor, Knighton, Knucklas and Presteigne -	13	68 5 0	35 19 10	104 4 10
Thomas Paynter, Esq. -	{ County and borough of Cambridge -	21	110 5 0	65 6 6	175 11 6
Wm. Anthony Collins, Esq. -	{ -	21	110 5 0	65 6 6	175 11 6
Edward Young, Esq. -	{ County of Carnarvon, and boroughs of Carnarvon, Conway, Bangor,	24	126 0 0	73 19 9	199 19 9
Wm. Newland Welaby, Esq. -	{ Pwllheli, Criccieth and Nevin -	24	126 0 0	73 19 9	199 19 9
D. C. Moylan, Esq. -	{ The two divisions of Cheshire, Chester, Macclesfield and Stockport	16	84 0 0	50 0 0	134 0 0
Francis Barlow, Esq. -	{ Boroughs of Clithero, Bury and Rochdale -	19	99 15 0	50 18 0	150 13 0
J. Williams, Esq. -	{ East Cornwall, and boroughs of Launceston, Liskeard, and Bodmin	17	89 5 0	78 18 5	168 3 5
John Cottingham, Esq. -	{ City of Durham, and southern division of county -	11	57 15 0	30 4 1	87 19 1
John Samuel Graves, Esq. -	{ Northern division of Durham, and boroughs of Sunderland, South	30	157 10 0	69 11 0	227 1 0
Frederick Slade, Esq. -	{ Shields, and Gateshead -	30	157 10 0	69 11 0	227 1 0
T. Shaw Brandreth, Esq. -	{ Northern division of Essex, and borough of Colchester -	34	178 10 0	103 4 0	281 14 0
L. J. Venables, Esq. -	{ County and borough of Flint -	23	120 15 0	85 1 4	205 16 4
C. H. Bosanquet, Esq. -	{ Southern division of Essex, and borough of Maldon and Harwich	27	141 15 0	100 8 0	242 3 0
R. Richmond, Esq. -	{ Eastern division of Gloucester and city, boroughs of Cheltenham	35	183 15 0	120 4 8	303 19 8
Edmund F. Moore, Esq. -	{ and Tewkesbury -	35	183 15 0	120 4 8	303 19 8
T. Hancock Hall, Esq. -	{ Northern division of Hants, Inchester, Andover, and Petersfield	16	84 0 0	49 8 7	133 8 7
Jerome William Knapp, Esq. -	{ County and city of Hereford and borough of Leominster	16	84 0 0	37 14 1	121 14 1
Thomas Peake, jun. Esq. -	{ -	16	84 0 0	37 14 1	121 14 1
H. Egerton, Esq. -	{ -	31	162 15 0	107 5 0	270 0 0
Ed. G. White, Esq. -	{ -	31	162 15 0	86 5 0	249 0 0
William Pyle Taunton, Esq. -	{ -	26	136 10 0	74 8 4½	210 18 4½
George Warry, Esq. -	{ -	22	115 10 0	74 8 4½	189 18 4½
William Shutt, Esq. -	{ -	24	126 0 0	81 7 0	207 7 0

William Gurdon, Esq.	County and borough of Huntingdon	9	47	5	0	23	1	1	1	70	6	14
Thomas Jacob Birch, Esq.	Western division of Kent, Greenwich and Maidstone	9	47	5	0	23	1	1	1	70	6	14
George Baker, Esq.	Eastern division of Kent, Hythe and Dover	35	183	15	0	97	18	1	0	281	13	1
John Deedes, Esq.	Southern division of Lancashire, boroughs of Manchester, Salford, Wigan, Warrington, Liverpool, and Oldham	35	183	15	0	97	18	0	0	281	13	0
Charles Gray Round, Esq.	Northern division of Lancashire, boroughs of Bolton-le-Moors, Blackburn and Preston	33	173	5	0	72	4	9	10	245	9	9
Edward Bullock, Esq.	County of Denbigh	33	173	5	0	72	4	10	1	245	9	10
Richard Atkinson, Esq.	Southern Division of Derby and boroughs therein	27	141	15	0	86	15	1	0	228	10	1
R. Charles Hildyard, Esq.	County of Merioneth	28	147	0	0	85	1	0	0	232	1	0
Peter Heywood, Esq.	County of Middlesex and borough of Marylebone	26	136	10	0	55	0	0	0	191	10	0
Stephen Temple, Esq.	County of Norfolk	38	199	10	0	81	10	0	0	281	0	0
E. E. Deacon, Esq.	Eastern division of Northampton and Peterborough	39	204	15	0	99	11	3	10	304	6	3
James Loxdale, Esq.	Southern division of Northampton and borough of Northampton	32	168	0	0	71	7	10	2	239	7	10
G. Granville Kekewick, Esq.	County of Dorset, and the boroughs therein	15	78	15	0	56	3	2	2	134	18	2
Robert Miller, Esq.	Southern division of Gloucester, and boroughs of Cirencester and Stroud	15	78	15	0	56	3	2	2	134	18	2
John Horatio Lloyd, Esq.	County of Carmarthen and boroughs therein	5	26	5	0	29	10	7	3	55	15	7
R. F. Falk, Esq.	Southern division of Devon and boroughs therein	19	99	15	0	48	8	3	3	148	3	3
R. H. Sandys, Esq.	County of Hertford, and boroughs of St. Alban's and Hertford	19	99	15	0	30	11	6	6	130	6	6
Francis Bayley, Esq.	Northern division of Leicester	17	89	5	0	37	11	0	0	126	16	0
Hon. Ph. Henry Abbot	Southern division of Leicester, and borough	17	89	5	0	56	15	6	6	146	0	6
N. N. Basevi, Esq.	London and Westminster	14	73	10	0	44	19	3	3	118	9	3
Richard Grealey, jun. Esq.		14	73	10	0	44	19	3	3	118	9	3
L. C. Humfrey, Esq.		30	157	10	0	109	18	7	8	267	8	7
E. H. Chamberlain, Esq.		28	147	0	0	101	18	8	8	248	18	8
John Halcomb, Esq.		43	225	15	0	229	12	4	4	455	7	4
Montague B. Bere, Esq.		33	173	5	0	60	13	0	0	233	18	0
Richard Clarke Sewell, Esq.		36	189	0	0	99	17	4	4	288	17	4
Maurice Swabey, Esq.		33	173	5	0	105	12	0	0	278	17	0
T. C. Sneyd Kinnersley, Esq.		33	173	5	0	92	18	8	8	266	3	8
George Chilton, jun., Esq.		20	105	0	0	63	13	11	11	168	13	11
Richard Whitcombe, Esq.		20	106	0	0	63	13	11	11	168	13	11
Francis Newman Rogers, Esq.		34	178	10	0	117	8	4	4	295	18	4
— Jardine, Esq.		34	178	10	0	117	8	4	4	295	18	4
— Gaselee, Esq.		34	178	10	0	117	8	4	4	295	18	4
V. Knox, Esq.		19	99	15	0	41	19	1	1	141	14	1
— Lennard, Esq.		19	99	15	0	41	19	1	1	141	14	1
Frederick Solly Flood, Esq.		16	84	0	0	56	2	7	7	140	2	7
William Henry Soltan, Esq.		15	78	15	0	52	15	6	6	131	10	6
Hon. Francis Curzon		19	99	15	0	47	1	8	8	146	16	8
William Finelly, Esq.		19	99	15	0	46	10	6	6	146	5	6
W. C. Keene, Esq.		8	42	0	0	8	8	3	3	50	8	3
R. D. Thomson, Esq.		8	42	0	0	8	8	3	3	50	8	3

BARRISTERS EMPLOYED.	DISTRICT.	Number of Days.	Salary.	Travelling and other Expenses.	Total.
Henry Jeremy, Esq.	Western division of Cornwall, and boroughs	18	£ 94 10 0	£ 53 13 5	£ 148 3 5
George Browne, Esq.	-	16	84 0 0	53 13 5	137 13 5
John Wilson, Esq.	County of Glamorgan and boroughs	18	94 10 0	58 17 9	153 7 9
E. V. Williams, Esq.	-	18	94 10 0	58 17 9	153 7 9
John Barnard Byles, Esq.	Western division of Norfolk, and boroughs	13	68 5 0	25 10 6	93 15 6
Wm. Hunt, Esq.	-	13	68 5 0	29 4 0	97 9 0
Lawrence Peel, Esq.	Southern division of Northumberland, Newcastle-on-Tyne, and Tyne-	41	215 5 0	106 15 5	322 0 5
Thomas Flower Ellis, Esq.	mouth	40	210 0 0	172 12 11	382 12 11
T. H. Marshall, Esq.	Northern division of Northumberland	21	110 5 0	108 10 0	218 15 0
Henry Alexander, Esq.	Southern division of Nottingham, and borough of Newark	17	89 5 0	57 18 9	147 3 9
John Dick Burnaby, Esq.	-	17	89 5 0	57 18 9	147 3 9
D. C. Moylan, Esq.	Northern division of Nottingham, and boroughs of Nottingham and	18	94 10 0	72 0 10	166 10 10
R. T. Fisher, Esq.	East Retford	19	99 15 0	85 0 0	184 15 0
J. F. Leach, Esq.	County of Cardigan	15	78 15 0	41 13 0	120 8 0
H. Sockett, Esq.	-	16	84 0 0	49 0 9	133 0 9
H. Sockett, Esq.	County of Pembroke, borough of Haverfordwest, Narberth, Fishguard,	22	115 10 0	86 14 6	202 4 6
Herbert George Jones, Esq.	Pembroke, Tenby, Wistow, Milford	28	147 0 0	136 5 0	283 5 0
Hugh Spencer Stanhope, Esq.	Borough of Preston	12	63 0 0	38 7 0	101 7 0
Robert Bruce Chichester, Esq.	County and borough of Monmouth	31	162 15 0	83 9 0	246 4 0
Roger Meeson, Esq.	County of Montgomery, and borough of Montgomery, Llandloy, Welch-	30	157 10 0	66 7 3	223 17 3
Edward Winslow, Esq.	pool, Mackinleth, Llanfyllin and Newtown	30	157 10 0	66 7 3	223 17 3
Robert Ph. Tytwhitt, Esq.	County and city of Oxford, and boroughs of Banbury and Wood-	15	78 15 0	62 12 3	141 7 3
George Clive, Esq.	stock	16	84 0 0	30 17 7	114 17 7
Edward Lloyd Williams, Esq.	Northern division of Derby	16	84 0 0	80 7 0	164 7 0
George Robert Marriott, Esq.	-	16	84 0 0	44 4 0	128 4 0
H. Waddington, Esq.	The parts of Lindsey, in the county of Lincoln, Lincoln and Great	22	115 10 0	70 2 6	185 12 6
Charles Harwood, Esq.	Grimsby	23	120 15 0	70 2 6	190 17 6
George Long, Esq.	Rochester, Chatham, Sandwich and Canterbury	12	63 0 0	88 1 0	151 1 0
Ed. Drake Brockman, Esq.	County of Rutland	12	63 0 0	26 10 6	89 10 6
James Parker, Esq.	-	2	10 10 0	10 13 7	21 3 7
S. R. Botanquet, Esq.	Rye, Hastings, Brighton and New Shoreham	23	120 15 0	38 17 2	159 12 2
Archer Ryland, Esq.	-	23	120 15 0	41 2 4	161 17 4
T. D. Chambers, Esq.	Northern division of Salop and Shrewsbury	32	168 0 0	94 14 7	262 14 7
Isaac Onslow Secker, Esq.	-	28	147 0 0	87 3 1	234 3 1
Charles Cooper, Esq.	Southern division of Salop, Ludlow, Wenlock, and Bridgenorth	16	84 0 0	45 16 4	129 16 4
Hugh B. Peake, Esq.	-	15	78 15 0	39 19 0	118 14 0

James Wake, Esq.	Eastern division of Somerset	28	147	0	0	0	0	0	0	147	72	8	6	219	8	6
Ed. Smirke, Esq.		28	147	0	0	0	0	0	0	147	185	3	4	332	3	4
H. N. Coleridge, Esq.		28	147	0	0	0	0	0	0	147	66	6	0	213	6	0
Wm. Golden Lumley, Esq.	Northern division of Stafford, Newcastle-under-Lyne, Stafford and Stoke-on-Trent	34	178	10	0	0	0	0	0	178	88	7	3	266	17	3
William Henry Stone, Esq.	South division of Stafford, boroughs of Tamworth, Walsall, and Wolverhampton	34	178	10	0	0	0	0	0	178	121	0	0	299	10	0
— Rumball, Esq.		13	68	5	0	0	0	0	0	68	—	—	—	68	5	0
W. Cripps, Esq.	Eastern division of Suffolk and Ipswich	13	68	5	0	0	0	0	0	68	71	16	5	140	1	5
Isaac Preston, Esq.		15	78	15	0	0	0	0	0	78	36	1	6	114	16	6
Henry James Perry, Esq.		15	78	15	0	0	0	0	0	78	37	7	8	116	2	8
E. H. Maltby, Esq.	Western division of Suffolk, Eye, Sudbury and Bury St. Edmunds	14	73	10	0	0	0	0	0	73	34	17	6	108	7	6
Charles Evans, Esq.		14	73	10	0	0	0	0	0	73	35	14	0	109	4	0
H. R. Reynolds, Esq.	Eastern division of Surrey, Lambeth, and Southwark	18	94	10	0	0	0	0	0	94	27	6	2	121	16	2
James Espinasse, Esq.		18	94	10	0	0	0	0	0	94	27	6	1	121	16	1
Hæler Capron, Esq.	Western division of Surrey, Guildford and Reigate	11	57	15	0	0	0	0	0	57	23	13	0	81	8	0
Russell Gurney, Esq.		11	57	15	0	0	0	0	0	57	23	13	0	81	8	0
John Jervis, Esq.	County and borough of Anglessea	6	31	10	0	0	0	0	0	31	6	17	0	38	7	0
Wilkinson Matthews, Esq.	Knarborough, Ripon and Leeds	28	147	0	0	0	0	0	0	147	65	12	2	212	12	2
Thomas Henry, Esq.	East Riding of York, Beverley, and Kingston-on-Hull	21	110	5	0	0	0	0	0	110	83	12	7	193	17	7
John Collyer, Esq.		22	115	10	0	0	0	0	0	115	35	17	3	151	7	3
William Elmsley, Esq.	Norwich and Yarmouth	26	136	10	0	0	0	0	0	136	45	19	0	182	9	0
Charles Austin, Esq.		12	63	0	0	0	0	0	0	63	26	10	104	89	10	104
— Rose, Esq.	Bedfordshire and Bedford	12	63	0	0	0	0	0	0	63	59	11	24	122	11	24
N. R. Clarke, Esq.	Southern division of Lincolnshire, Stamford, Boston and Grantham	21	110	5	0	0	0	0	0	110	62	13	6	172	18	6
B. Wildman, Esq.		25	131	5	0	0	0	0	0	131	62	13	7	193	18	7
W. Carpenter Rowe, Esq.	Northern division of Wilts, Marlborough, Calne, Devizes, Chippenham, Malmesbury and Cricklade	33	173	5	0	0	0	0	0	173	80	11	7	253	16	7
Richard Missing, Esq.		33	173	5	0	0	0	0	0	173	108	5	10	281	10	10
Charles Saunders, Esq.	Southern division of Hants, boroughs of Christchurch, Lymington, Portsmouth and Southampton	33	173	5	0	0	0	0	0	173	82	16	4	256	1	4
Edward J. Gambier, Esq.		27	141	15	0	0	0	0	0	141	94	18	2	236	13	2
T. C. Inman Esq.	Eastern division of Sussex, Lewes and Hove	27	141	15	0	0	0	0	0	141	94	18	1	236	13	1
		15	78	15	0	0	0	0	0	78	44	7	8	123	2	8
		15	78	15	0	0	0	0	0	78	44	7	8	123	2	8
		9	47	5	0	0	0	0	0	47	34	9	6	81	14	6
	Western division of Sussex, Chichester, Arundel and Midhurst	10	52	10	0	0	0	0	0	52	34	9	6	86	19	6
	Westmoreland, Lancaster, Kendal and Bradford	26	136	10	0	0	0	0	0	136	71	1	6	207	11	6
	Whitehaven, Cockermouth, Western division of Cumberland	22	115	10	0	0	0	0	0	115	84	2	2	199	12	2
	Southern division of Warwick and Warwick	29	152	5	0	0	0	0	0	152	58	18	2	211	3	2
		30	157	10	0	0	0	0	0	157	61	10	0	219	0	0
	Tower Hamlets and Finsbury	19	99	15	0	0	0	0	0	99	53	10	10	153	5	10
	Ashton-under-Lyne and Wakefield	17	89	5	0	0	0	0	0	89	53	10	10	142	15	10
		5	26	5	0	0	0	0	0	26	9	1	2	36	6	2

BARRISTERS EMPLOYED.	DISTRICT.	Number of Days.	Salary.	Travelling and other Expenses.	Total.
William Dickinson	Northern division Warwick	17	£. 89 5 0	£. 38 1 3	£. 127 6 3
	Western division of Worcester and boroughs	17	89 5 0	38 1 3	127 6 3
	Southern division of Wilts, Sarum, Westbury, Wilton	14	73 10 0	30 1 6	103 11 6
	Eastern division of Worcester, and boroughs of Dudley, Droitwich and Evesham	16	84 0 0	46 7 8	130 7 8
	North Riding of York and City, and Ainsty, Malton, Northallerton, Richmond, Scarborough, Thirsk and Whitby	19	99 15 0	66 9 7	166 4 7
	Northern division of Devon	19	99 15 0	50 18 9	150 13 9
	Berkshire, Abingdon, Reading, Wallingford and New Windsor	27	141 15 0	85 3 0	226 18 0
	Isle of Wight, and Newport	26	136 10 0	83 17 7	220 7 7
	West Riding of York, Sheffield, Halifax, Huddersfield and Pontefract	34	178 10 0	82 16 6	261 6 6
		32	168 0 0	79 7 0	247 7 0
		32	168 0 0	84 17 6	252 17 6
		26	136 10 0	117 7 2	253 17 2
		27	141 15 0	111 12 10	253 7 10
		29	162 5 0	76 10 0	228 15 0
		29	152 5 0	76 9 6	228 14 6
		21	110 5 0	102 12 10	212 17 10
		27	141 15 0	100 10 11	242 5 11
		30	157 10 0	183 19 0	341 9 0
		30	157 10 0	103 11 10	261 1 10
		3,595	18,873 15 0	10,952 3 9	29,825 18 9
Messrs. Goret & Birchall, Clerk of the Peace for Lancashire, for Advertisements, &c. published by direction of the Secretary of State -				9 7 9	9 7 9
				£ 10,961 11 6	29,835 6 6

Note.—The accounts of A. E. Cockburn, Esq. and Charles Penruddock, Esq., as Revising Barristers for the Western Division of Somerset, amounting, the former to 292*l.* 0*s.* 11*d.*, and the latter to 256*l.* 17*s.* 9*d.*, remain unexamined; Mr. Cockburn's for want of a communication from him, and Mr. Penruddock's because only this day received. These claims, therefore, have not been included in this Return.

I am not aware whether any or what sums have been paid to the above-named gentlemen by order of the Lords of His Majesty's Treasury.

GEORGE MAYLE.

25 February 1833.

SHERIFFS' COURTS IN LONDON.

It does not appear to be generally known, that there exist, in the city of London, two courts of justice, called the Sheriffs' Courts, wherein are tried actions of debt, case, trespass, covenant and other personal actions, attachments, and sequestrations.

Here, debts of any amount may be recovered, and a cause, although defended, can be tried for less than 7*l.*, in three weeks: if the debtor should not defend the action, the costs will amount to about 3*l.* only, and execution can be obtained in a week.

By the custom of London, a creditor may attach money or goods of his debtor, either in the creditor's own hands, or in the custody of a third person. The process of attachment, properly called foreign attachment, is the cheapest, and, at the same time, the most prompt and efficacious remedy for the recovery of debts recognised by the laws of England. An attachment for 20,000*l.*, as well as for 20*l.*, may be made in less than an hour, at an expense of no more than 2*l.*; and within the space of a few days, and for less than 5*l.*, judgment may be obtained, and the creditor's demand paid over to him. An attachment is also of general utility, it being a mistaken notion, that citizens alone are entitled to its advantages. Neither the creditor, nor the debtor, nor even the holder of the debtor's property, need be free of, or resident within the city. If a creditor, resident any where out of the city, be in possession of property belonging to his debtor, which he cannot by law dispose of, he may bring it to London, and dispose of it by attachment.

A sequestration is an attachment of the defendant's property made in the hands of the defendant himself, where he absconds, and leaves goods in a house, &c. locked up.

It is also a custom of the city, that if a debtor be fugitive, (that is, if he intends to withdraw himself and his goods out of London,) he may be arrested before the day of payment, to find better security; upon which he must go to prison, unless he enter into recognizance, with two sureties, to pay the debt when due, or render to prison. Although this custom has of late years fallen much into disuse, yet it is available, and undoubtedly in some cases, a beneficial custom to the citizens of London; inasmuch as it gives them a power of holding a defendant to bail before an action could be maintained in any of the superior Courts.

To the Editor of the Legal Observer.

Sir,

HAVING seen some letters in your valuable miscellany, on the practice of the Sheriffs' Courts, London, for the speedy recovery of debts by attachment and otherwise, I have thought it would be acceptable to you to have a list, which I inclose, of the old, together with the new attorneys, who have been admitted at the only two Courts of Aldermen which have been held since the Sheriffs' Courts were

thrown open, and from which it will be seen, that giving facility of admission to attorneys has induced several highly respectable practitioners to avail themselves of the privilege and the advantages of these Courts. A.

ATTORNEYS ADMITTED OF THE SHERIFFS' COURTS.

Old Attorneys.

C. Walker, 17, Cateaton Street.
C. Reeves, 34, Ely Place, Holborn.
J. Pullen, 22, Austin Friars.
J. Platt, 5, Church Court, Clements Lane, Lombard Street.
B. Davies, 4, Devonshire Square, Bishopsgate.
H. Hoppe, 3, Sun Court, Cornhill.
J. Davies, 4, Kings Arms Yard, Coleman Street.
M. Sarson, 28, Broad Street Buildings.

New Attorneys.

F. Hobler, Walbrook.
W. Trott, 1, Crown Court, Threadneedle Street.
G. Walford, 8, Grafton Street, Broad Street.
W. C. Humphreys, 119, Newgate Street.
J. Pontifex, 5, St. Andrews Court.
J. Arden, 2, Clifford's Inn Passage.
R. E. Arden, Ditto.
D. Lay, 14, Old Jewry.
T. West, 1, Mount Street, Minories.
J. Morris, 12, Crescent, Minories, and 91, Poplar.
H. Hindmarsh, 7, Crescent, Jewin Street.
J. Callow, 3, Walbrook Buildings.
W. Hine, Charterhouse Square.
J. C. Fourdrinier, 3, Angel Court, Throgmorton Street.
J. Fawcett, 44, Jewin Street, and South Sea Chambers.
F. Broughton, 4 and 6, Falcon Square.
J. J. Tanner, 1, New Basinghall Street.
W. B. Nayler, 2, Bucklersbury.
W. Thorn, 80, Cheapside.

[Do these gentlemen transact business for other attorneys of the Superior Courts on the usual terms of agency?]

SELECTIONS FROM CORRESPONDENCE. No. XXV.

ON THE EXPENSES OF ADMISSION TO PRACTICE IN THE VARIOUS COURTS.

To the Editor of the Legal Observer.

Sir,

DEVOTED as your pages are to the interests of the profession, I trust no apology is necessary for offering a few remarks on the expenses of the admission of gentlemen to practise in the various Courts of Justice in this country. There are five Courts, of which it is absolutely necessary that a general practitioner should

now be a member, *viz.* the Courts of Chancery, King's Bench, Common Pleas, Exchequer, and Bankruptcy; and in order to his admission he is compelled to swear, no less than five several times, that he has paid the duty to Government imposed on articles of clerkship; to obtain five several certificates from the Judges' Clerks that he is qualified to practise; and to attend five several times to take the oaths of allegiance, &c. In addition to the stamp duty of 25*l.* payable to Government, he has to pay for his admission in each Court about as follows:—

	£.	s.	d.
Affidavit of service and swearing -	0	5	0
To the Judge's Clerk, for filling up a ready signed blank form, at least	0	10	0
The Master, for fees, at least -	1	0	0
The Crier of the Court asks -	0	5	0
And the Master's Clerk, who makes out the admission, wants "what you please," as it is termed—say -	0	5	0

In all, at the very least. - £2 5 0

This, for the five Courts, amounts in each case to 1*l.* 5*s.*, in addition to ten oaths, and the trouble of attending five several days at Westminster. A sum of at least 10,000*l.* a-year is thus indirectly levied upon the profession; and what good end is thereby attained? Surely all useful purposes would be answered if one affidavit of service and payment of the duty were made, and one oath of allegiance, &c. sworn; if one Judge's Clerk went through the farce of delivering a formal and ready signed certificate of admission, and if one Master were paid. If it is thought desirable to increase the expense of entering the profession, let it be done fairly and openly, by raising the stamp, and let the Government reap the benefit; but if this is not thought expedient, why should not the production of a regular admission in any one Court, entitle the party to place his name on the roll of any other Court, by the payment of a small fee to the keepers of such roll only? Such a plan would save much trouble, and relieve gentlemen entering the profession from an odious, because an uncalled-for tax—from a tax which, being levied in the shape of fees, is of the most obnoxious character. Having myself gone through the mummery, I am induced to call the attention of the profession generally to the subject, in the hope that, as the remedy is so practical, some member of the body who has a seat in Parliament will take up the subject; and, by carrying through a remedial measure, entitle himself to the thanks of those gentlemen who are about to be admitted among us.

I am, Sir,

Your obedient servant,

Lincoln's Inn Fields,
13th March, 1833.

C. G. L.

GAVELKIND.

Sir,

I AM examining the title to freehold lands in Kent; and so far back as the title can be

furnished, the lands have always passed either by will or deed; so that the law of descent has in no instance been resorted to. The question to be ascertained is, whether or not this particular estate be of gavelkind tenure. I am aware the legal presumption is, that all lands in Kent are of gavelkind tenure, and must be so held except the contrary be made to appear; but as it is well known that many large estates in Kent have, by various statutes, been disgavelled and converted into the English common law tenure, it is important to discover what lands were comprised in the disgavelling statutes. They are not there described by metes and bounds, but merely as the manors, land, hereditaments, &c. of *A. B.*, *C. D.*, &c. &c.; which seems to make it necessary to trace the title of the lands as far back as these statutes, —a matter of great difficulty, and probably impossible; and especially to identify the lands, unless there be some ancient description running throughout. I shall be glad to know whether plans, or plain descriptions, of the estates and lands which from time to time have been the subject of the disgavelling statutes, be preserved in any office of record or otherwise, or how the actual tenure of any particular land in Kent is with certainty to be known, when it does not appear on the title that it has ever passed either according to gavelkind or common law tenure.

O.

BANKRUPTCIES SUPERSEDED.

From Feb. 19, to Mar. 19, 1833, both inclusive.

Cue, Charles, Gloucester. Hatter.
Freeman, John, jun., Drayton, Somerset, Linman and Sail Cloth Manufacturer.
Gaukrodger, Tho. Huddersfield, Merchant.
Haynes, Tho., Great Yarmouth, Cabinet Maker.
Leadbeater, John, and John Barlow, Manchester, Cabinet Makers.
Lord, Richard, Barby, Northampton, Maltster, &c.
Myers, Myer, Birmingham, Factor and Pawnbroker.
Prestinari, Francis, Leather Lane, Holborn, Looking Glass Manufacturer.
Swift, Thomas Crayden, Eastchurch, Kent, Victualler and Butcher.
Schonswar, Geo., Ferriby, Kingston-upon-Hull, Merchant.
Timson, Abel, Dover, Draper.
Woolbert, John Henry, Southampton Row, Russell Square, Jeweller.
Wright, John, Liverpool, Silk Weaver.

BANKRUPTS.

From Feb. 19, to Mar. 19, 1833, both inclusive.

Bent, James, Bankfoot, Hebden Bridge, Halifax, York, Cotton Spinner. *Wiglesworth & Co.*, Gray's Inn; *Suscliffe & Son*, Hebden Bridge.
Burton, Jonathan, High Holborn, Grocer. *Adlington and Co.*, Bedford Row; *Turquand, Off. Ass.*
Beer, Wm., Bristol, Wharfinger. *Hinton*, Bristol; *Hicks & Braikenridge*, Bartlett's Buildings, Holborn.
Bulman, Tho., and Joseph Mellor, Manchester, Drapers. *Johnson and Weatherall*, Temple; *Booth & Harrison*, Manchester.
Bennet, Edw., Merstham, Surrey, Smith. *Holmer*, New Bridge Street; *Clerk, Off. Ass.*
Brown, Cha., Glamford Briggs, Lincoln, Chymist. *Nicholson & Co.*, Glamford Briggs; *Dynaley & Co.*, Gray's Inn.
Best, Wm., Ashford, and Read Best, Birmingham, Pocket Book Makers. *Norton & Chaplin*, Gray's Inn Square; *Hawkins & Co.*, Birmingham.
Beare, John, Birmingham; Bishop Wearmouth; Durham; Pall Mall East, Westminster; & Liverpool, Ironfounder. *Wingfield*, Great Marlborough Street; *Abbott, Off. Ass.*
Brockman, John, Leamington Priors, Warwick, Wine Merchant. *Spencer & Compton*, St. Mildred's Court, Poultry; *Perry*, Leamington Priors.

Brownent, Sam., Liverpool, Watch Maker. *Wills & Co.*, Tokenhouse Yard; *Mason*, Liverpool.
 Byers, Geo., Pall Mall, Hatter. *Gregory*, Clement's Inn.
 Brignall, Tho., South Mima, near Barnett, Innkeeper. *Gibson*, Off. Ass.; *Columbine*, Carlton Chambers, Regent Street.
 Byrne, Francis Lee, Kingston-upon-Hull, York, Wine and Spirit Merchant. *Lace & Co.*, Liverpool; *Roscoe & Co.*, Temple.
 Brindley, John, Great Barr, Aldridge, Stafford, Farmer and Cement Manufacturer. *Healey*, Walsall, Stafford; *Turner*, Bloomsbury Square.
 Battyll, John, Fulbourn, Cambridge, Common Brewer. *Hall*, Lyon's Inn; *Foster*, jun., Cambridge.
 Badger, Wm., Merthyr Tidvil, Glamorgan, Grocer. *Bartlett*, Birmingham; *Holme & Co.*, New Inn.
 Clarke, Wm., Redditch, Worcester, Builder. *Browning*, Redditch; *Porter & Nelson*, Temple.
 Cardwell, Tho., Manchester, Merchant. *Taylor & Son*, Manchester; *Walsley & Co.*, Chancery Lane.
 Castleden, Sam., Three Colts Street, Limehouse, Baker. *Pellatt*, Ironmonger's Hall; *Kitchener*, Off. Ass.
 Clarke, John Percy, Manchester, Commission Agent. *Adlington & Co.*, Bedford Row; *Morris & Co.*, Manchester.
 Clark, Wm. Arthur, Bishopsgate Street, Wine and Spirit Merchant. *Green*, Off. Ass.; *Newman*, Guildhall Buildings.
 Chambers, Tho., Leamington Priors, Warwick, Builder. *Sharpe & Field*, Old Jewry; *Haynes*, Warwick.
 Cann, John, Broad Street, Bloomsbury, Eating House Keeper. *Gibson*, Off. Ass.; *Clist & Co.*, Red Lion Square.
 Daffurn, Thomas, Old Compton Street, Soho, Corn Dealer. *Robinson & Co.*, Charter House Square; *Groom*, Off. Ass.
 Downes, Joseph, Hatton Street, Islington, Jeweller. *Whitmees*, Charles Street, Horslydown; *Lackington*, Off. Ass.
 Dickinson, Wm., Milk Street, Cheapside, Warehouseman. *Edwards*, Off. Ass.; *Tillear & Co.*, Old Jewry.
 Davis, Wm. Dixon, Leamington Priors, Warwick, Innkeeper. *Porter & Nelson*, Temple; *Haynes*, Warwick; *Morris*, Warwick.
 Dawson, Wm., Yeadon, York, Grocer. *Battye & Co.*, Chancery Lane; *Adams*, Bradford.
 Edden, Rich., Newgate Street, Tailor. *Sylvester & Walker*, Furnival's Inn & Canterbury.
 Evans, John, Haverfordwest, Baker. *Rees*, Haverfordwest; *Hilliard & Hastings*, Gray's Inn.
 Freeman, James, Blainafon, Monmouth, Victualler. *Bourdillon*, Great Winchester Street; *Geach*, Pontypool.
 Fiddes, Robert, Hackney, Tavern Keeper. *Parnell*, Church Street, Spitalfields.
 Greenley, David, jun., Goswell Street, Victualler. *Watson & Broughton*, Falcon Square; *Lackington*, Off. Ass.
 Gunning, Wm. Broadbent, Egham, Surrey, Bricklayer. *Poole & Gamlen*, Gray's Inn; *Cannon*, Off. Ass.; *McClellan*, Egham Hythe.
 Gaiger, John, Beaminster, Dorset, Grocer. *Messrs. Berkeley*, Lincoln's Inn; *Gibson*, Off. Ass.
 Greaves, Howgate, Leicester, Grocer. *Sweet & Carr*, Basinghall Street; *Green*, Off. Ass.
 Gale, Robert, and Richard Mayor, Manchester, Dyers, &c. *Hitchcock*, Manchester; *Johnson & Weatherall*, Temple.
 Griffiths, John, High Holborn, Confectioner. *Abbott*, Off. Ass.; *Thorndike*, Staple Inn.
 Glossop, Jos., Brussels, Belgium, Wax Chandler. *Tennant*, Off. Ass.; *Sparr*, Copthall Court.
 Green, James, Birmingham, Hamrod Maker. *Holme & Co.*, New Inn; *Bartlett*, Birmingham.
 Gibson, Rich. Porter, Manchester, Victualler. *Young & Ward*, Blackman Street, Southwark; *Booth & Co.*, Manchester.
 Harrison, John Southey, Bath, Picture Dealer. *Fisher*, Castle Street, Holborn.
 Holthouse, Carsten, New Road, St. George's in the East, Sugar Refiner. *Blunt, Roy, & Co.*, Liverpool Street; *Cannon*, Off. Ass.
 Hopson, Edw., Stonehouse, Gloucester, Draper. *Gregory & Smith*, Bristol; *Blower & Vizard*, Lincoln's Inn Fields.
 Harris, Wm., Castle Hayes, Tutbury, Stafford, Brickmaker. *Sir J. D. Fowler*, Burton-upon-Trent. *Hicks & Braikewridge*, Bartlett's Buildings.
 Heslington, Geo., Knaresborough and Ripon, York, Linen and Woollen Draper. *Hawkins & Co.*, New Boswell Court; *Dewes*, Knaresborough; *Gill*, Knaresborough.
 Hellewell, John, Wadsworth, Halifax, York, Worsted Manufacturer. *Jagues & Co.*, Coleman Street; *Edwards*, Halifax.
 Hobday, Sam., Bradford Street, Aston, near Birmingham, Snuffer Maker, &c. *Holme & Co.*, New Inn; *Parker*, Birmingham.
 Hodson, Tho., Westbromwich, Stafford, Baker. *Hunt*, New Boswell Court; *Hunt*, Wednesbury.
 Hartley, Joseph, Oaken Gates, Shifnal, Salop, Miller, &c. *Brookes & Co.*, Newport, Salop; *Hicks & Morris*, Gray's Inn.
 Hodgson, Rob., Manchester, Brewer. *Milne & Co.*, Temple; *Crossley & Co.*, Manchester.
 Hardy, Rob., Barbican, Victualler. *Kitchener*, Off. Ass.; *Binn*, Essex Street, Strand.
 Hudson, John, Haslingden, Lancaster, Plumber. *Milne & Co.*, Temple; *Mitchell*, Haslingden.
 Hall, John, Burton-upon-Humber, Lincoln, Builder.

Dynceley & Co., Gray's Inn; *Goy*, Barton-upon-Humber.
 Hawksworth, Cha., Liverpool, Victualler. *Atkinson*, Liverpool; *Adlington & Co.*, Bedford Row.
 Harrison, Rich., Atherton, Lancaster, Cotton Manufacturer. *Beverley*, Verulam Buildings, Gray's Inn; *Buchanan*, Atherton.
 Hunt, Wm., Rochdale, Lancaster, Woollen Manufacturer, *Elakelock & Co.*, Serjeants' Inn, Fleet street; *Kershaw*, Rochdale.
 Hargill, Stephen Slater, Newlay, near Leeds, York, Dyer. *Messrs. Woodhouse*, Temple; *Stott*, Leeds.
 Isaacs, Abraham, Petticoat Lane, Spitalfields, Rag Merchant. *Mark*, Calthorp Street, Gray's Inn Road; *Clark*, Off. Ass.
 Jacob, Geo., Southampton, Grocer. *Sandys & Sons*, Crane Court, Fleet Street; *Nichols*, Southampton.
 James, Thomas, otherwise Thomas James Roland, Keynsham, Somerset, Letter of Horses, &c. *Tomes*, Lincoln's Inn Fields; *Okey*, Bath.
 Jowett, Joshua, Great Queen Street, Lincoln's Inn Fields; *Purnishing Ironmonger*. *Duncombe*, Lyon's Inn; *Belcher*, Off. Ass.
 Ikin, Jonathan, Leeds, Merchant. *Scott*, St. Mildred's Court; *Atkinson & Co.*, Leeds.
 Keith, Wm., Manchester, Merchant. *Adlington & Co.*, Bedford Row; *Coates*, Manchester.
 Keene, John Cadogan, Crooked Billett Yard, Kingsland Road, Bricklayer. *Abbott*, Off. Ass.; *Constable & Kirk*, Symond's Inn, Chancery Lane.
 Lockier, Daniel, Brighton, Victualler. *Benson & Freeman*, Brighton; *Freeman & Co.*, Coleman Street.
 Lloyd, John, Carnarvon, Builder. *Byrne*, Cook's Court, Lincoln's Inn; *Williams*, Penrhos.
 Lancaster, John, Aberdeen Place, Edgware Road, and Copland Street, Lisson Grove, Builder. *Fisher*, Walbrook.
 Mucklow, James, Birmingham, Stamper. *Wills*, Birmingham; *Adlington & Co.*, Bedford Row.
 Martin, Morris, Regent Street, Paper Stainer. *Lumley*, Chancery Lane.
 Morris, Sam., Hellingly, Sussex, Shoe Maker. *Cooper*, Lewes; *Palmer & Co.*, Bedford Row.
 May, Geo., Evesham, Worcester, Bookseller. *Bonsfield*, Chatham Place, Blackfriars; *Messrs. Workman*, Evesham.
 Mellor, Jos., Manchester, Tailor. *Nield*, King Street, Cheapside; *Hewitt*, Manchester.
 Newson, John, Silver Street, Wood Street, Whitesmith. *Jervis*, Queen Street, Cheapside; *Bolcher*, Off. Ass.
 Newbold, William, Birmingham, Leather Seller. *Biggs*, Southampton Buildings; *Haywood*, Birmingham.
 Nield, Daniel, Shaw Edge within Crompton, Lancaster, Cotton Spinner. *Hampson*, Manchester; *Adlington & Co.*, Bedford Row.
 Noad, David Innes, Copthall Court Agent. *Locklee*, Old Broad Street; *Graham*, Off. Ass.
 Nicoll, Alex., Conduit Street, Bond Street, Tailor. *Billing*, King Street, Cheapside; *Tennant*, Off. Ass.
 Oaks, Wm., Houndsditch, Coppersmith. *Murphy*, Castle Alley, Royal Exchange.
 Pine, James, jun., Devonport, Victualler. *Gilbert*, Devonport; *Smith*, Basinghall Street.
 Pass, Michael, Nine Elms, Vauxhall, Lime Burner. *Evans & Harper*, Kennington Cross; *Graham*, Off. Ass.
 Piercy, Edw., Tichbourne Street, Golden Square, Carver & Gilder. *Tennant*, Off. Ass.; *Young*, Poland Street, Oxford Street.
 Parker, John, Houndsditch, Cork Cutter. *Edwards*, Off. Ass.; *Robinson*, Queen Street Place.
 Partridge, William, Birmingham, Warwick, Wharfinger. *Adlington & Co.*, Bedford Row; *Wills*, Birmingham.
 Pratt, Henry, Bilston, Stafford, Miller. *Wright*, Golden Square; *Gawood*, Bilston.
 Rich, Geo., Curzon Street, May Fair, Tailor. *Groom*, Off. Ass.; *Burgess & Grant*, Curzon Street.
 Rutland, Tho., Nottingham, Bobbin & Carriage Maker. *Harrison*, Birmingham; *Norton & Chaplin*, Gray's Inn.
 Rosseter, Tho., Greathridge, Romsey Extra, Southampton, Miller. *Holmes*, Romsey.
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 Ryland, Charles, Birmingham, Iron Merchant. *Clarke*, *Richards*, & Co., Lincoln's Inn Fields; *Colmore*, or *Wills*, Birmingham.
 Sanders, Sam., Totness, Devon, Coach Builder. *Michelmore*, Totness; *Fairbank*, Staple Inn.
 Shea, James, Plymouth, Watch Maker, &c. *Spyer*, Broad Street Buildings; *Edmonds*, Plymouth.
 Simson, John Mulley, Frating, Essex, Cattle Jobber. *Sparling*, Colchester; *Stevens*, *Wood*, & Co., Little St. Thomas Apostle.
 Swift, James, Liverpool, White Cooper. *Jones & Ward*, John Street, Bedford Row; *Foster & Lloyd*, Liverpool.
 Spivey, Joseph, King Street, Great Hermitage Street, Provision Agent. *Edwards*, Off. Ass.; *Francis*, Austin Friars.
 Scott, Eliz., Great Yarmouth, Norfolk, Grocer. *Palmer*, Great Yarmouth; *Clarke*, *Richards*, & Co., Lincoln's Inn Fields.
 Schonswar, Geo. and Henry, Kingston-upon-Hull and London, Merchants. *Rosser & Son*, Gray's Inn Place; *Frost*, Hull.
 Topham, Rob., Dock Head, Bermondsey, Linen Draper. *Parker*, St. Paul's Church Yard,

Tinslay, Geo., New Quebec Street, Portman Square, Vic-
tualier. Warren, Portsmouth Chambers, Lincoln's Inn
Fields; *Kitchener & Turquand*, Off. Ass.
Tansley, Jos., Little Dean Street, Westminster, Ironmonger.
Flower, Bread Street, *Clark*, Off. Ass.
Twycross, William, Godalming, Surrey, Leather Dresser.
Pontifex, St. Andrew's Court, Holborn. *Lackington*,
Off. Ass.
Tuck, Charles, Great Yarmouth, Norfolk, Shipwright. *Pal-
mer*, Great Yarmouth; *Swain, Stevens & Co.*, Freder-
rick's Place, Old Jewry.
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Warwick, Brick Maker, &c. *Heming & Co.*, Lincoln's
Inn Fields; *Baxter*, Atherstone.
White, Geo. Ness, Waterloo Place, Albany Road, Coal
Merchant. *Jordeson & Webb*, Lombard Street; *Whit-
more*, Off. Ass.
Witt, Gilbert, Chenies Street, Bedford Square, Cheesemon-
ger. *Palmer*, Mitre Chambers, Fleet Street; *Graham*,
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Watts, Edw., Oldbury-on-the-Hill, Gloucester, Saddler.
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wick.
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The Legal Observer.

Vol. V.

SATURDAY, APRIL 6, 1833.

No. CXXXIV.

———"Quod magis ad nos
Pertinet, et noscire malum est, agitamus."

HORAT.

THE NEW BILL FOR LOCAL COURTS.

BEFORE proceeding to notice the present Bill of the Lord Chancellor, it may be useful to point out, in few words, the scope of the former Bill, as originally introduced in the House of Commons, and afterwards in the Lords, in 1830. That Bill was designed to establish six species of Courts:

1st. A sort of County Court, for the trial of *actions*, where the debt did not exceed *one hundred* pounds; and in tort, 50*l*. A jury (we suppose of twelve) was necessary in these cases, unless dispensed with by both parties.

2d. A Court, proceeding in the form of *Plaint*, for sums not exceeding five pounds.

3d. A Court for *Legacies*, to the amount of one hundred pounds.

4th. A Court for actions of any amount, to be tried by *Consent*.

5th. An *Arbitration* Court.

6th. A *Reconcilement* Court.

In all these Courts, the defendant's place of residence determined the *venue*.

The principal alterations in the present Bill are the following:

It limits the jurisdiction of the Court to actions of debt, trespass, and trover, for *twenty* pounds; and actions of assault, false imprisonment, slander, libel, seduction, crim. con., and all torts to person or personal property, where the damages laid do not exceed *fifty* pounds; but if no more than 20*l*. be recovered in the Superior Court, no costs are to be allowed.

NO. CXXXIV.

The *venue* is to be laid in the jurisdiction where the plaintiff and defendant *both* reside; and in case the plaintiff and defendant should not reside in the same jurisdiction, the plaintiff may bring his action within the *defendant's* jurisdiction. Where persons are jointly liable, and not residing in the same jurisdiction, the plaintiff is to be at liberty to proceed in either jurisdiction, without joining the other defendants in the action.

The *jury* is limited to *six* persons, and by consent they may be dispensed with; and causes may also be heard in private, in matters of account.

Each party may examine the other on oath, in the presence of the Judge, one week prior to the trial.

Notice and inspection of documentary evidence to be given.

All barristers and attorneys are authorized to practise in these Courts as advocates, &c.

No execution is to issue for ten days after the judgment.

The sum may be ordered by the Judge to be paid by instalments. The defendant may be examined as to his property; every kind of which is subjected to execution.

Instead of an *APPEAL* (as in the former Bill) from the Judge in Ordinary to one or both of the Judges of Assize, and from them to the Superior Courts, the appeal is to be made to any two or more of the Puisne Judges of the Superior Courts, who are to sit out of term as a Court of Appeal, with power to order a new trial, or judgment for either party. The Judge of the Local

Court, on notice of appeal, may order the money to be paid into Court, and security for costs to be given.

As in the former Bill, no question can be tried, involving title to freehold, copyhold, leasehold, or other tenure, tithe, toll, market, fair, or other franchise, or any title by bankruptcy; but by consent, these and all other questions of any amount may be decided in these Courts.

The Rules of Practice are to be made by eight or more of the Superior Judges, including the three Chiefs.

The plan of the Court of *Reconcilement* is the same as before; and the "advice" of the Judge is not compulsory.

The *Legacy* and *Arbitration* Courts, formerly intended, are not now provided for.

Courts of Conscience, Request, and other Courts for small debts, are to cease.

Fiats in bankruptcy may be directed to the Judges in Ordinary; and in case of their illness, a barrister or solicitor may act. Appeals to be made to the Court of Review, and thence to the Lord Chancellor. Official assignees are also to be appointed.

The Superior Courts of Equity may send accounts and enquiries to be investigated before the Local Courts, by *viva voce* examination of witnesses; and regulations are made for the mode of proceeding.

The Judges in Ordinary are also to administer all oaths now administered by Masters Extraordinary or by Commissioners. They are also to take pleas, answers, and examinations. By virtue of their office, they are to be Examiners of Witnesses in Equity, and are to act according to the same rules as the Examiners of the Superior Courts, with liberty [as provided in Lord Wynford's Bill, in common law suits] to put any questions they may think fit, in writing, which are to be annexed to the interrogatories. The parties on both sides may be present at the examination.

The Chancellor and Chief Baron are to be authorized to make rules and orders for the more effectual taking of evidence in Equity suits before the Judges in Ordinary.

The rest of the Bill relates to the appointment of the Judges and officers of the Court, the forms of proceeding, and other details incident to the general clauses above abstracted.

The following is such portion of the Bill as we are able to find room for this week:

1. Whereas it is expedient that the means should be afforded to the people of this realm of having their suits tried as speedily and as near to their own homes as may be, whereby expense, vexation, and delay may be avoided:

And whereas it is fitting that at the first the provisions for this purpose should be confined to certain parts of the country, to the end that the rest thereof may profit of the improvements suggested by experience when the same shall be extended over the whole of the kingdom, and that the due administration of justice may be placed upon a sure foundation; Be it enacted, that it shall be lawful for his Majesty, in such cases as he shall deem it expedient so to do, to nominate and appoint, by commission under the Great Seal, one serjeant at law, or one barrister of ten years standing, for any one or more county or counties, riding or ridings, or any parts thereof respectively, who shall be called the Judge in Ordinary of the same, and shall preside in a court to be called the Court of the Judge in Ordinary; and every such Judge shall, within the limits of his jurisdiction, have, exercise, and enjoy all the rights, powers, and privileges of a Judge of a Court of Record.

2. That every such judge shall divide his jurisdiction into districts, specifying the parishes and townships contained in each district, and the place of trial for each district, and shall hold courts for the trial of causes at each of such places as many times in the year as his Majesty shall, by and with the advice of his Most Honorable Privy Council, think fit to order; and that every such Judge shall appoint the particular times for holding his courts at each of the said places during the year, such times not being within the month of August; nor being the times for holding the assizes or the quarter sessions of the peace at the said places, and shall cause notice to be given in the London Gazette of the several districts within his jurisdiction, and of the parishes and townships contained in each district, and of the times and places so appointed for trial.

3. That every Judge in Ordinary shall be and is hereby declared to be a justice of the peace for the county or counties, or riding or ridings, for which or for any part of which he shall be appointed such Judge in Ordinary, although he may not have any such qualification by estate as is required by law in the case of any other person being a justice of the peace for any county or riding.

4. That for each of the said Judges in Ordinary it shall be lawful for his Majesty to appoint one fit and proper person to be the registrar of the court to be holden by the said Judge, and that every such registrar may appoint one fit and proper person to be his clerk.

5. That each of the said Judges shall and may appoint a fit and proper person to be the crier, and two fit and proper persons to be the messengers and ushers, of the court to be holden by the said Judge; and in case it shall happen that the service of the said court shall require any extra messengers to be appointed, then each of the said Judges shall have power to appoint such number of fit and proper persons, from among the bound bailiffs to the sheriffs; to be extra messengers, as may appear to him to be necessary, with the approbation of one of his Majesty's Principal Secretaries of State: Provided always, that the persons ap-

pointed messengers and ushers shall find security, to the satisfaction of the Judge by whom they shall be appointed, to the amount of two hundred pounds, such security to be given in the form of a bond to the Registrar of the court, conditioned for the faithful discharge of the duties of such messengers and ushers.

6. That the said Judges and the said Registrars shall hold their offices as long as they shall well behave themselves therein, and shall not be removed therefrom unless the two Houses of Parliament shall present a joint address to his Majesty praying for such removal.

7. That the said Clerks shall hold their offices during the pleasure of the said Registrars respectively; and the said Criers and Messengers and Ushers and Extra Messengers shall hold their offices during the pleasure of the said Judges respectively; and that the said Clerks, Criers, Messengers, and Ushers, and Extra Messengers, may be removed from their offices by the said Registrars and Judges respectively in a summary manner, and without any reason being assigned.

8. That each of the said Judges, before entering upon the execution of his office, shall take an oath in the following form before the Lord High Chancellor, who is hereby authorized to administer the same, and again before the *Custos Rotulorum*, or in his absence before the High Sheriff and Clerk of the Peace, who are severally authorized and required to administer the same in the open Court of the said Judge in Ordinary:

'I, A. B., do solemnly swear, that I will faithfully and to the best of my ability execute the office of Judge in Ordinary for the [here specify the county, &c. for which the Judge is appointed], and administer justice equally, without fear, favour, or affection.

'So help me God.'

9. That every such registrar and clerk shall be sworn in open Court before the Judge in Ordinary faithfully to execute his office in the following form; (that is to say,)

'I, C. D., do swear, that I will faithfully and to the best of my ability execute the office of Registrar [or Clerk] of this Honourable Court.

'So help me God.'

10. That no person appointed to any office under this act shall demand or take, upon any pretence whatsoever, any fee, gratuity, or emolument other than and except such fees as are allowed in and by the schedule marked () to this act annexed, or as may from time to time be settled and allowed by the Judges of the Superior Courts at Westminster as hereinafter mentioned; and if any such person shall offend in that behalf, he shall lose such office as he may hold under the authority of this act, and be disabled from ever again holding the same or any other office under this act.

11. That all fees from time to time payable by virtue of this act, except such as are payable to messengers, extra messengers, and attorneys, shall be paid to the registrars or their clerks, and shall by them be carried to the account of a fund to be called "The Fee Fund,"

and shall be from time to time, as the Judges in Ordinary shall direct, paid into the Consolidated Fund of the United Kingdom of Great Britain and Ireland, at the Bank of England, after deducting such sums as shall be allowed to such judges or other officers by way of salary.

12. That any persons admitted barristers at law may practise as advocates before the said Judges in Ordinary, and any persons admitted attorneys of any of the Superior Courts at Westminster may practise as advocates, attorneys, or agents before the said Judges; but no attorney or agent so practising shall, on any pretence whatever, demand or take more by way of fees for work by him done than according to the table of fees set forth in schedule marked () to this act annexed, or according to such table of fees as may from time to time be settled by the Judges of the Superior Courts at Westminster as hereinafter mentioned; and if any attorney or agent so practising shall offend in that behalf, he shall be liable to the payment of such fine as the Judge in Ordinary, upon examining in a summary manner the charge against him made by any person of whom he may have demanded or received such fees, shall think fit to impose; and if such fine shall not be paid at the time ordered by the said Judge, the same shall and may be levied by a writ of *fieri facias* to be issued out of the court of the said Judge.

13. That a table of all fees authorized for the time being to be taken by any officers of, or attorneys practising in, the Courts of Judges in Ordinary, shall be hung up in some conspicuous place in every such court.

14. That no attorney shall bring any action in any Court of any Judge in Ordinary for any business done by him in or about any cause in any Court of any Judge in Ordinary, until a copy of the bill, signed with the attorney's name and place of business, shall have been delivered personally, or at the dwelling place of the party charged therein, at least one calendar month before the commencement of the action; which bill may be referred by the party charged therein to the registrar of the court within whose jurisdiction such party shall reside, to be taxed by such registrar; and if the attorney, or the party charged or his attorney, having two days notice of the time and place appointed for taxation, shall neglect to attend, the registrar may proceed to tax the bill *ex parte*, and the amount allowed by him only shall be recovered: Provided always, that every action brought in the Court of any Judge in Ordinary by any attorney or solicitor for work done in any other Court, or in any matter not connected with any cause in the Court of any Judge in Ordinary, shall be brought according to the course of the law of the realm and the provisions of this act.

15. That every such Judge in Ordinary shall have cognizance of and shall try, in the manner herein-after directed, all actions of assumpsit, covenant, and debt, whether the debt be by specialty or on simple contract, and all actions whatever in the nature of actions for

the recovery of debt, and all actions of trespass or trover for taking goods and chattels, provided the sum sought to be recovered shall not exceed *twenty* pounds; all actions of personal tort, and actions in the nature thereof, whether the same be for assault, or assault and battery, or false imprisonment, or slander by words, or for libel, or seduction, or criminal conversation, or false representation of character, solvency, or property, or for malicious prosecution, or for maliciously arresting or holding to bail, or for maliciously issuing out a commission or *fiat* in bankruptcy, or for any other tort whatsoever to the person or to personal property, provided the damages sought to be recovered shall not exceed *fifty* pounds: Provided always, that no action shall be tried by any such Judge in Ordinary wherein the title to land, whether freehold, copyhold, leasehold, or other tenure whatsoever, or to any tithe, toll, market, fair, or other franchise, shall be in question, unless both parties shall sign a memorandum stating that they believe such title to be in question, and are willing to have it tried by any such Judge: Provided also, that if any answer shall be filed with the registrar, whereby any title to land as aforesaid, or to tithe, toll, market, fair, or other franchise, shall come in question, the cause shall cease before the Judge in Ordinary upon the party who shall put in such answer verifying the matter of the same upon oath, and the costs of the other party shall be allowed and taxed as herein-after directed, unless both parties or their attorneys shall sign a memorandum agreeing that the cause shall proceed before the said Judge.

16. That if both parties shall agree, by a memorandum signed by them or by their attorneys, that the Judge in Ordinary shall have power to try any of the actions herein-before respectively mentioned in which the sum sought to be recovered shall exceed the sum of twenty pounds or fifty pounds, herein-before limited in the case of such actions respectively, or any action in which the title to land, whether of freehold, copyhold, leasehold, or other tenure, or to any tithe, toll, market, fair, or other franchise, shall be in question, then and in such case the said Judge shall have jurisdiction and power to try such action: Provided always, that the said parties or their attorneys shall state in their said memorandum of agreement that they know such cause of action to be above the said sums respectively, or that they know such title to come in question in such action, and provided that such memorandum shall be filed with the registrar at the time of filing the demand of the plaintiff, as herein-after directed; provided also, that all local actions to be tried before any Judge in Ordinary, with the consent of the parties, shall be brought and tried in that jurisdiction only in which the lands, tenements, or hereditaments are in respect whereof such actions shall be brought.

17. That all actions to be brought in pursuance of this act shall be deemed to arise and shall be tried within the jurisdiction of the Judge in Ordinary, within whose jurisdiction the

[plaintiff or any one of the plaintiffs, and also the defendant or defendants shall reside; and in case the plaintiff or some one of the plaintiffs shall not reside within the same jurisdiction as the defendant or defendants, then it shall be lawful for the plaintiff or plaintiffs to bring his or their action before the Judge in Ordinary within whose jurisdiction the] ^a defendant or defendants shall reside; and where, in case of persons jointly liable, all the persons so liable shall not reside within the jurisdiction of the same Judge in Ordinary, it shall be lawful for the plaintiff or plaintiffs to bring his or their action before any Judge in Ordinary within whose jurisdiction any of the persons so jointly liable shall reside, by serving such last-mentioned person or persons with a demand in the manner herein-after mentioned; and such last-mentioned person or persons may serve the other person or persons so jointly liable with notice of such demand, in order that he or they may appear and join in defending such action; and in case such other person or persons shall not appear and join in defending such action, the action may proceed, and judgment may be obtained and execution issued against the person or persons who shall have been served with the plaintiff's demand, notwithstanding the others jointly liable may not have been served with such demand or joined in such action, and no plea in abatement shall be allowed for, or advantage taken of, the non-joinder of the person or persons so jointly liable: Provided always, and there is hereby reserved to the person against whom execution may have been issued any right which he may have to demand contribution from the other person or persons jointly liable with him; and in case he shall have caused such other person or persons to be personally served with a notice of the plaintiff's demand in such action ten days before the day appointed for appearing and answering to the same, the judgment recovered against him in such action shall be admissible in evidence in any action for contribution afterwards brought by him against the person or persons so personally served by him as aforesaid, for the purpose of proving their liability to such contribution; but in case he shall not have caused such other person or persons to be personally served as aforesaid, then the liability of such person or persons to contribution shall be proved in the ordinary manner.

18. That from and after the commencement of this act, if any action shall be brought in any of His Majesty's Superior Courts of Common Law for any cause for which an action might, without the consent of the parties, have been brought, in pursuance of this act, before any Judge in Ordinary, [save and except where the power of suing in the said superior Courts is hereinbefore reserved,] ^a and the plaintiff in such action shall recover no more than twenty

^a The words inclosed in brackets, as the clause now stands, are unnecessary. See "Notes of the Week," p. 466.

pounds, then and in such case the plaintiff shall have judgment only for the sum so recovered in such action, without any costs whatsoever, unless the defendant or defendants in such action shall have consented, by a memorandum signed by him or them, or his or their attorney, to the action being brought in one of the said superior Courts, or unless such action be for any tort, and the Judge before whom the same shall be tried shall certify on the back of the record that the action was fit to be brought in such superior Court.

19. That from and after the commencement of this act no action shall be brought or proceedings had in any Court of Conscience or Court of Requests, or other Court for the Recovery of Small Debts, within the limits of the jurisdiction of any Judge in Ordinary, for any matter whereof such Judge in Ordinary has jurisdiction.

20. That it shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any Judge in Ordinary; and in case it shall appear to the said Judge, in any stage of the proceedings, that any cause of action has been so split or divided, he shall dismiss the action brought thereupon with costs, unless the plaintiff or his attorney shall sign a memorandum, to be filed with the registrar of the Court, undertaking to accept such sum of money as the Court is by this act empowered to adjudge in full of the whole of his demand in respect of the cause of action so split or divided; and thereupon the plaintiff shall, upon proving his case, recover to an amount not exceeding that which the Court is by this act empowered to adjudge, and such judgment shall be a full discharge of all demands of such plaintiff against the defendant or defendants for the same cause of action in all Courts whatsoever.

21. That every action to be brought in the Court of any Judge in Ordinary shall be commenced by a demand in writing, in which demand the plaintiff shall shortly, and according to the truth of the case, set forth his cause of action, whether for debt or damages, and shall also state the place of abode of himself and of his attorney, if he sue by one, and the place of abode of the defendant, and shall cause one copy of such demand to be filed with the registrar of the said Court, three weeks before the sitting of the Court at which the cause is to be tried, and such registrar shall paste the said copy in a book to be by him kept for that purpose, and shall set down in such book the time and place for the trial of the cause; and a copy of such demand shall be served upon each defendant by a messenger of the Court three weeks before the sitting of the Court at which the cause is to be tried; and at the foot of such copy a notice shall be given of the time and place at which the plaintiff intends to try the cause, and that, in default of the defendant appearing by himself, or his counsel or attorney, and answering at such time and place, the trial will proceed in his absence: Provided always, that the place specified in such notice as the place of trial shall be the place

of trial appointed by virtue of this act for the district in which the defendant resides.

22. That the copy of the plaintiff's demand, containing such notice as aforesaid, hereinbefore directed to be served on the defendant, may be served either by delivering such copy to the defendant, or by delivering such copy to the wife or servant of the defendant, at the defendant's usual place of abode, or to any person at such place of abode, being or representing himself or herself to be an inmate thereof, provided that the purport of such demand and notice be at the time of such service explained to the defendant or other person to whom the same may be delivered as aforesaid; and in case the messenger who shall be employed to serve the copy of such demand and notice shall demand admittance into the house where the defendant usually resides, and such admittance shall be refused, it shall be lawful for him to put such copy into the house, or to fix such copy upon the door of the house, and the same shall in such case be deemed to be good service upon the defendant.

23. That the defendant, if he shall so think fit, may serve upon the plaintiff or his attorney, within eight days after the service of the plaintiff's demand, an answer in writing, setting forth shortly, and according to the truth of the case, the nature of his defence; and if he shall not within such eight days so serve the plaintiff or his attorney with such answer, he shall only be allowed at the trial, by way of defence, to insist upon and give in evidence matter in denial of the cause of action, but not any special matter which confesses and avoids the cause of action, nor any matter in justification, unless the plaintiff shall consent to his so doing; and in case the defendant shall at the trial apply for leave to make such special defence as aforesaid, the Judge in Ordinary may, if he shall so think fit, postpone the trial, upon the defendant paying to the plaintiff the costs of the day; and in case the said Judge shall postpone the trial, the defendant may either then and there, *ore tenus*, state in court the special ground of his defence, which shall be taken down in writing by the registrar or his clerk, and a copy thereof furnished to the plaintiff, or his attorney, at the expense of the defendant, or the defendant may, within eight days after such postponement of the trial, serve the plaintiff or his attorney with an answer in writing, containing the special ground of his defence.

24. That in all cases of actions brought before any Judge in Ordinary, other than and except actions for assault, or assault and battery, or for slander, libel, false imprisonment, malicious prosecution, malicious arrest, or holding to bail, or for malicious issuing out a commission or fiat in bankruptcy, or for seduction, or criminal conversation, it shall be lawful for the defendant, after being served with the demand of the plaintiff, to make a tender to him of a sum by way of satisfaction of his demand, and, if the same shall be refused by the said plaintiff, to pay the same into court to the registrar, or to pay into court a sum by way

of satisfaction of such demand, without any previous tender thereof to the plaintiff, giving notice in either case to the plaintiff or his attorney of such payment into court; and if the judgment shall be entered against the defendant for no more than the sum so tendered and paid into Court, or so paid into court without any previous tender, the plaintiff shall pay to the defendant the costs by him incurred after the tender and refusal, or after the notice of such payment into court without a tender, as the case may be, such costs to be taxed and recovered as hereinafter directed, and shall take the money paid out of court: Provided always, that where any person against whom any action shall be brought for any thing done in pursuance of any act of parliament, or in the execution of his office, or otherwise, is now by law enabled to tender amends or pay money into court in any case not mentioned in this act, nothing herein contained shall deprive such person of such right, power, or privilege.

25. That after any such answer as aforesaid shall have been served on or furnished to the plaintiff, the trial shall proceed upon the demand and answer, without any further pleading or formal joinder of issue.

26. That the demands and answers in actions before any Judge in Ordinary may be according to the forms set forth in the schedule () to this act annexed, or as near thereto as the circumstances of the case will admit, until and unless it shall be otherwise directed by his Majesty, by and with the advice of his Most Honourable Privy Council, as herein-after mentioned.

27. That where either party requires longer time than is hereinbefore allowed before putting in his answer, or before proceeding to trial, he shall make application to the Judge three days before the time when he ought to have so put in his answer, or, if he desires the trial to be delayed, three days before the first day of the sitting of the court at which the trial was intended to be had, giving in either case two days notice to the other party or his attorney; and the said Judge shall, upon hearing the party or his attorney on the matter of the application, and also the other party or his attorney, and both upon oath, if he thinks fit, (which oath he is hereby authorized to administer,) have power to grant or refuse the delay sought, and to impose such terms as he thinks fit in respect of costs or admissions upon the party seeking the delay; but if the Judge refuses the said request, he shall in every case order that the party applying shall pay the costs of the other party; and in all cases the said Judge shall have power to cause the whole or any part of the costs to be paid by the attorney, if he shall appear to have been the cause of the expense which has been incurred.

28. That in all actions of assumpsit, covenant, and debt, whether the debt be on specialty or on simple contract, and in all actions whatsoever in the nature of actions for the recovery of debt, and in all actions of trespass or trover for taking goods and chattels, brought before any Judge in Ordinary, it shall be lawful for

the plaintiff, after filing and service of his demand, to apply to the said Judge for leave to examine the defendant upon his oath touching the subject-matter of such action, and for the defendant, after being served with such demand, to apply to the said Judge for leave to examine the plaintiff upon his oath touching the same; but before any such examination shall take place, a week's notice shall be given to the party to be examined, or to his attorney, by or on behalf of the party applying for such examination; and all such examinations shall be had before the Judge in Ordinary at his chambers, in the presence of the counsel or attorneys of the parties, if they think fit to attend, and shall be taken down in writing by the Registrar or his clerk; and both parties, in case both are to be examined, shall be examined at the same meeting, and one party shall not be at liberty to examine the other party without being subject to examination himself; and either party may by himself, or by his counsel or attorney, examine the other party; and after any such examination the said Judge may, if he shall think fit, enlarge the time for the next step of procedure; and if either party shall not attend at the time appointed for such examination, the other party may apply to the said Judge to enlarge the time for examination or to postpone the trial; and the said Judge may make such order thereupon, as to him shall seem meet; and the costs incident to such enlargement or postponement as aforesaid shall be in the discretion of the said Judge.

29. That if either party in any cause shall, after due notice, neglect to attend at the time and place appointed for the examination of such party before any Judge in Ordinary, and no sufficient excuse be made for such non-attendance, it shall be lawful for the said Judge to order such party to appear at such time and place as he shall think fit to appoint, and in case such party shall not on appearing make a sufficient excuse, or in case he shall fail to appear in pursuance of such order, to fine such party in any sum which the said Judge shall think fit to order, and to cause such fine to be paid over to the opposite party; and in case such fine shall not be paid at the time ordered, the same shall and may be levied by a writ of *fiery facias*, to be issued out of the court of the said Judge in Ordinary.

30. That every Judge in Ordinary shall hold his sittings for each of the districts within his jurisdiction at the times and places to be appointed as hereinbefore mentioned for the trial of causes therein, and shall sit from day to day for the trial of the causes set down until the whole number shall be disposed of.

31. That if both parties in any cause shall agree between themselves not to try their cause by means of a Jury, but only by the Judge in Ordinary, and shall notify such agreement by a memorandum in writing, signed by themselves or their attorneys or agents, to the Registrar, before the first day of the sittings of the said Judge, the said Judge shall himself try the cause without any Jury.

32. That if both parties in any cause pending before any Judge in Ordinary shall agree to a statement of the facts in the cause, it shall be lawful for them to take the judgment of the said Judge upon such statement, without any trial, subject always to such appeal and on such terms as are hereinafter mentioned.

33. That all actions (except in the cases hereinbefore last mentioned) whereof any Judge in Ordinary has cognizance by virtue of this act shall be tried by such Judge and a jury of six persons, according to the course of the law of the realm, except in so far as it is otherwise provided by this act.

34. That every Judge in Ordinary shall, in the present and in every succeeding year, order the clerk of the peace of every county or riding, the whole or any part of which shall be within the jurisdiction of such Judge, to make out a duplicate of the jurors book then in use or about to be brought into use, or of such parts of the said book as such Judge may think fit to specify in such order; and the clerk of the peace, upon the receipt of such order, shall with all convenient speed make out such duplicate, and deliver the same to the registrar of the court of such Judge, and shall receive from the registrar a reasonable sum for the trouble and expense of making out the same; and every such duplicate shall be the book of jurors qualified and liable to serve for the trial of causes before the Judge in Ordinary having jurisdiction for the county or riding, or the part of the county or riding, to which such duplicate may relate; and every such duplicate shall be kept by the registrar, and shall be by him used as the jurors book for the same time as the jurors book of which or of any part of which it is a duplicate.

35. That the registrar of the Court of every Judge in Ordinary shall cause to be summoned, one week before the first day of each sitting of such Judge, twenty-four persons, named in the jurors book by him kept as aforesaid, to attend at the time and place appointed for holding such sitting, and every such summons shall be according to the form in the schedule () to this act annexed, and shall be served either personally on each of such persons, or by leaving it at his place of abode; and in summoning such persons regard should always be had to the convenience of the individuals so summoned, and the nearness of their places of abode to the place where the court is holden; and no person shall be so summoned oftener than once in one year.

36. That the registrar of the court shall make out a list of the jurors so summoned, together with their places of abode, and additions, and shall cause their names to be written severally on slips of paper, and put into a box; and the names of the jurors for the trial of causes shall be drawn out of the box by the registrar; and each party may object to any person whose name is drawn out, without assigning any cause, until no more than six remain; but if any objection is made to these six, it must be stated to and decided on by the Judge before whom the cause is to be tried;

and if any such objections are allowed, the names of the jurors rejected without cause assigned shall be returned to the box, and drawn again, until a sufficient number be found to make a jury of six, and such jury of six shall be the jury sworn for the trial of the cause: Provided always, that if there should not be six persons attending, or against whom no objections have been allowed, it shall be lawful for the Judge to order the requisite number of persons from among the bye-standers to be summoned by the registrar and set on the jury, subject to any objections which may be made for causes assigned, except for want of qualification or want of summons: Provided also, that the said Judge may, if he sees fit, direct the registrar to divide the list of twenty-four jurors into two lists, and to require the persons in the one list to attend and serve for so many days at the beginning of the sittings as the said Judge shall order, and those in the other list to attend and serve for the residue of the sittings, according as the said Judge shall think fittest for the convenience of the said persons; and then and in that case the registrar shall divide the list of jurors into two lists, and cause the persons named in each of such lists to be summoned to attend on different days accordingly.

37. That each juror shall receive for each cause which he shall be sworn to try the sum of

38. That if any person having been duly summoned to attend as a juror in the Court of any Judge in Ordinary, shall not attend in pursuance of such summons, or being thrice called in court shall not answer to his name, or if any such person being present in court, or any such bye-stander in court, after having been called shall not duly appear, or after his appearance shall wilfully withdraw himself from the presence of the court, it shall be lawful for the said Judge to impose such fine upon every such person or bye-stander so making default, (unless some reasonable excuse shall be proved,) as to the said Judge shall seem meet; and if such fine shall not be paid at the time ordered by the said Judge, the same shall and may be levied by a writ of *fiery facias*, to be issued out of the said Court.

39. That either party in any cause depending in the Court of the Judge in Ordinary may obtain from the registrar of the said court a summons, according to the form in the schedule () to this act annexed, signed by the said registrar, for the attendance of any witness before the said court; and service of any such summons in any part of England or Wales shall be as valid as if the same had been served within the jurisdiction of the said Judge; and if any witness so summoned shall neglect or refuse to attend, and it shall be proved before the said Judge that he was personally summoned, and that his reasonable expenses were tendered to him, it shall be lawful for the said Judge to order the said witness to appear before him at such time and place as he shall think fit to appoint, and in case the said witness shall not on appearing make a sufficient

excuse, or in case he shall fail to appear in pursuance of such order, to fine the said witness in a sum not exceeding the amount of the sum claimed for debt and damages, with the costs actually incurred, if the witness was summoned on the part of the plaintiff, or not exceeding the sum recovered, with the costs incurred, if the witness was summoned on the part of the defendant, and to cause such fine to be paid over to the party on whose behalf such witness was summoned, and failed to attend; and if such fine shall not be paid accordingly, the same shall be levied by a writ of *fiери facias*, to be issued out of the said court.

40. That if any person appearing as a witness before any Judge in Ordinary, or any party in a cause required to be examined before such Judge as hereinbefore mentioned, shall refuse to be sworn, or, being a Quaker or Moravian, to make his affirmation, or, being sworn or having made his affirmation, shall refuse to answer such questions as may be lawfully put to him, or, being a witness, to produce any books, papers, or writings required by such summons as aforesaid to be produced, it shall be lawful for the Judge to commit him to the common gaol or house of correction of the county in which he resides for his contempt, until he shall submit to be sworn, or to make his affirmation, or to give evidence, or to produce what is required by the summons, as the case may be: Provided always, that no witness or party shall be compellable to answer any question which may tend to expose him to any penalty or criminal charge.

41. That if any person taking an oath, or making an affirmation, in any action, examination, or other proceeding before any Judge in Ordinary, under any of the provisions hereinbefore or hereinafter mentioned, shall wilfully and corruptly swear or affirm falsely, he shall be deemed guilty of perjury, and shall be liable to be prosecuted and punished accordingly; and if, in any such action, examination, or other proceeding the said Judge shall deem any witness or party to have wilfully and corruptly sworn or affirmed falsely, it shall be lawful for him to direct such witness or party to be prosecuted for the same by the clerk of the peace of the county within which the witness or party so swore or affirmed; and such clerk of the peace shall prefer an indictment or indictments against such witness or party, and prosecute the same according to the course of the law, and the court in which such prosecution or prosecutions shall be, shall make an order for payment of the expenses of the same upon the treasurer of the county.

42. That wheresoever by any provision in this act any person is required or allowed to be examined upon oath, or to verify any matter upon oath before any Judge in Ordinary, such person, if a Quaker or Moravian, shall and may be examined on his affirmation, or verify on his affirmation; and the Judge in Ordinary is hereby authorized to administer to every such person an oath or affirmation, as the case may require.

43. That if either party in any action before

any Judge in Ordinary shall intend to give in evidence any paper or writing whatsoever, he shall give notice thereof to the other party or his attorney four days at the least before the sittings at which such action is to be tried; and the said Judge shall and may, if he so thinks fit, order him to show the paper or writing so intended to be given in evidence to such other party or his attorney, at such last mentioned party's expense; and no paper or writing shall be given in evidence which is not specified in such notice, unless proof shall be given that it came into the possession of the party, or his attorney or agent, since the fourth day previous to the sittings at which it is proposed to be given in evidence.

44. That if any action standing for trial before any Judge in Ordinary shall appear to him to be fit to be tried out of Court, in respect of its involving any matter of account, such Judge shall and may, with the consent of both parties, or their counsel or attorneys, proceed to try the same in private, at such place as he may think proper to appoint.

45. That if the defendant shall not, by himself, his counsel or attorney, appear in Court when the cause shall be called on for trial, and no sufficient excuse be made for such nonappearance, the Court shall, on proof of the due service of a copy of the plaintiff's demand, and on proof of the amount of the debt or damages claimed in the demand, give judgment against the defendant for such debt or damages, or so much thereof as is found to be just, and for the costs incurred by the plaintiff in prosecuting his action; and if the defendant shall appear by himself, his counsel or attorney, when the cause shall be called on for trial, but the plaintiff shall not so appear, and no sufficient excuse be made for such nonappearance, or having appeared shall not prosecute his suit, or shall fail to prove his case, the Court shall give judgment of nonsuit against the plaintiff, and that the defendant have judgment for the costs incurred by him in the defence of the suit.

46. That where the defendant in any action before any Judge in Ordinary shall not have been personally served with a copy of the plaintiff's demand, and shall not have appeared at the trial of the cause, and a verdict shall have passed against him, such defendant may apply to the said Judge to grant a new trial on the ground of his having had no knowledge that any such action had been commenced against him; and in case it shall appear to the said Judge, upon hearing the defendant on the matter of the application, and also the plaintiff or his attorney, or any other party, and upon examining them upon oath if he shall so think fit, that the defendant was not personally served with a copy of the plaintiff's demand, and that he had no reason to know or believe that any such action had been commenced against him, and that he has been guilty of no delay in making the application in question, and that he believes that he has a good defence to the action, then and in such case the said Judge shall have power to grant a new trial, and to order execution to be stayed, and to impose such

terms as he may think fit in respect of costs, admissions, or otherwise, upon the defendant.

47. That the registrar shall tax all fees and other costs in all actions before the Judge in Ordinary, and such costs shall be the costs as between attorney and client; and where such registrar shall order any costs to be paid by either party to the other party upon any application or interlocutory proceeding in any action, the costs awarded in and by such order shall and may be levied by a writ of *fiery facias* in like manner as costs awarded in and by a judgment are hereinafter directed to be levied; and where a verdict shall be found for the plaintiff, judgment for his costs, as well as for the sum recovered by the verdict, shall be entered up against the defendant; and where a verdict shall be found against any plaintiff, or he shall be nonsuited, judgment shall be entered up against him for the defendant's costs; and when any judgment of any Judge in Ordinary shall be given, a memorandum thereof, in the form set forth in schedule () hereunto annexed, shall be entered in a book kept by the registrar, and shall be signed by the Judge, upon which judgment execution shall issue by writ of *fiery facias* or *elegit*, according to the course of the law of the realm; and such writ shall be issued by the registrar of the Court, and directed to the sheriff or sheriffs of any county in England or Wales, and shall be executed by him or them in like manner as such writs issuing out of the Superior Courts at Westminster now are by law executed; and the fees for every *fiery facias* and for the execution thereof shall be added to the sum to be levied by the *fiery facias*, and shall be levied accordingly.

48. That in case a plaintiff shall recover a judgment against a defendant in the Court of any Judge in Ordinary, and such defendant shall not discharge such judgment within ten days after the same shall have been entered up, it shall be lawful for the Judge of the Court where the judgment was given, upon the application of the plaintiff, to summon the defendant to appear before him at such time and place as the said Judge may think fit to appoint, for the purpose of being examined touching his property; and if the defendant being so summoned shall not attend before the said Judge at the time and place appointed, having no lawful impediment then and there made known to the said Judge and allowed by him, it shall be lawful for the said Judge by warrant under his hand and seal to authorize and direct any person or persons therein named for that purpose to apprehend such defendant wheresoever he may be found, whether within the jurisdiction of the said Judge or without, and to bring him before the said Judge to be examined as aforesaid; and upon the appearance of any defendant so summoned or brought before the said Judge, the said Judge shall examine the defendant on oath as to what property, whether real or personal, he is seised or possessed of, or in anywise entitled to, and where such property is; and if the said defendant shall refuse to be sworn, or shall re-

fuse to answer any questions put to him by the said Judge relating to his property, it shall be lawful for the said Judge, by warrant under his hand and seal, to commit him to prison, there to remain without bail until he shall submit himself to the said Judge to be sworn, and full answers make, to his satisfaction, to such questions as shall be put to him.

49. That the said Judge shall by deed assign to the said plaintiff all the lands and tenements, goods and chattels, and debts, credits, specialties, and sums of money, of the said defendant, or such part thereof as shall be sufficient to discharge the judgment of the said plaintiff; and such assignment of the lands of the said defendant shall be sufficient to pass any lands, tenements, or hereditaments, whereof the defendant shall be seised in tail, in possession, reversion, or remainder, and whereof no reversion or remainder is in the Crown; and every such assignment shall be good against the said defendant and the issue of his body, and against all persons claiming under him after such judgment; and against all persons whom the said defendant, by fine, common recovery, or any other means, might cut off or debar from any remainder, reversion, or other interest in or out of any of the said lands, tenements, and hereditaments; and the assignment of the debts due to the defendant shall vest the property, right, and interest in such debts in the said plaintiff; and after such assignment neither the defendant nor any person claiming through or under him shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as a debt of the defendant by any person, according to the custom of the city of London or otherwise, but such plaintiff shall have like remedy to recover the same in his own name, in like manner as the defendant himself might have done before the assignment.

50. That it shall be lawful for the Judge in Ordinary, upon application made to him, and upon hearing both parties or their attorneys, and, if he thinks fit, examining the parties on oath, to direct the sum recorded in the judgment against any defendant to be paid by instalments, and to stay execution until default shall be made in paying any instalment, and, if he thinks fit, to direct security to be found for the payment of such instalments.

51. That no execution, except by leave of the Judge in Ordinary, shall issue on any judgment, until ten days shall have elapsed after the judgment shall have been entered up; and if notice shall have been given before such execution issues of an appeal to one of the Superior Courts of Common Law at Westminster, the execution shall not be issued; but it shall be lawful for the Judge in Ordinary to order the party against whom the judgment has been signed to pay the amount thereof into the hands of the registrar, to abide the event of the intended appeal.

52. That if either party in any cause before the Judge in Ordinary shall be dissatisfied with the determination or direction of the said

Judge in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the Superior Courts of Common Law at Westminster, two or more of the Puisne Judges whereof shall sit out of term as a Court of Appeal for that purpose; provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and also give security for the costs of the appeal, whatever be the event, and for the amount of the judgment if he be the defendant and the appeal be dismissed; provided nevertheless that such security, so far as regards the amount of the judgment, shall not be required in any case where the Judge in Ordinary shall have ordered the party appealing to pay the amount of such judgment into the hands of the registrar, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and such order shall be final.

53. That such appeal shall be in the form of a case agreed on by both parties or their attorneys, and, if they cannot agree, the Judge in Ordinary, upon being attended by them or their attorneys at his chambers, shall settle the case, and sign it; and such case shall be transmitted by the appellant to the principal clerk or prothonotary of the Court to which the Judges before whom the appeal is to be brought shall belong.

54. That no judgment, order or determination given or made by any Judge in Ordinary, nor any cause or matter brought before him or pending in his Court, shall be removed by appeal, motion, writ of error, *certiorari*, or otherwise, into any other Court whatever, save and except in the manner and according to the provisions hereinbefore mentioned.

55. That His Majesty, by and with the advice of His Most Honorable Privy Council, may require the Judges of the Superior Courts of Common Law at Westminster, or any eight or more of them, of whom the two Chief Justices and the Chief Baron shall be three, to make from time to time rules for regulating the proceedings of the Courts of Judges in Ordinary, and the pleadings in the same, and the manner of producing documentary evidence, and making admission of facts, and to alter from time to time any rules so made, which respective rules may be directed to be used either in lieu of or in addition to any of the provisions of this act, as to the said Judges shall seem meet, and also from time to time to settle a table of the fees to be taken by the officers of the Courts of the Judges in Ordinary, and by the attorneys or agents practising in such Courts, in lieu of or in addition to the fees allowed to such officers, attorneys, or agents respectively by the schedules to this act annexed; and all rules so made as aforesaid, and every table of fees so settled as aforesaid, shall be of the like force and validity as if the same had been enacted by the authority of Parliament; and His Majesty, with the advice aforesaid,

shall cause the same to be transmitted to the Judges in Ordinary for their government: Provided always, that a copy of such rules and table of fees shall be laid before both Houses of Parliament within four weeks after the same shall be made, or if Parliament shall not be sitting, then within four weeks after the beginning of the next ensuing session.

[To be concluded in our next.]

PRIVY COUNCIL APPELLATE JURISDICTION.

THE Bill on this subject is intituled "An Act for the better Administration of Justice in His Majesty's Privy Council;" and after reciting the Acts of 2 & 3 W. 4, c. 92; 25 Hen. 8, c. 19; and 8 Eliz. c. 5; and that the matters of appeal or petition to His Majesty's Privy Council have usually been heard before a Committee of the whole Council, proposes to enact—

1. That a "Judicial Committee of the Privy Council" shall be formed, consisting of the President of the Privy Council, the Lord Chancellor, the Chief Justice of the King's Bench, the Master of the Rolls, the Vice Chancellor, Chief Justice of the Common Pleas, Chief Baron, Judge of the Prerogative Court, Judge of the Admiralty, Chief Judge of the Court of Review, and Members of the Council who have held any of the preceding offices.

2. Appeals from Vice Admiralty Courts abroad, &c. to be made to the King in Council.

3. All appeals from sentence of any Judge, &c. to be referred by His Majesty to the Committee, to report thereon.

4. His Majesty may refer any other matter to Committee.

5. No matter to be heard unless in presence of four members of the Committee.

6. The King to direct attendance of Judges, members of the Committee.

7. Evidence may be taken *viva voce*, or upon written depositions.

8. The Committee may order any particular witnesses to be examined, and as to any particular facts; and may remit causes for rehearing.

9. Witnesses to be examined on oath, and liable to punishment for perjury.

10. The Committee may direct an issue to try any fact.

11. The Committee may, in certain cases, direct depositions to be read at the trial of the issue.

12. The Committee may make such orders as to the admission of evidence as is made by the Court of Chancery.

13. The Committee may direct new trials of issue.

14. Powers, &c. of 13 G. 3. c. 63, and 1 W. 4. c. 22, with regard to examination of witnesses, applied to the Judicial Committee.

15. Costs to be in the discretion of the Committee.

16. Decrees to be enrolled.
17. The Committee may refer matters to Registrar, in same manner as matters are by Court of Chancery referred to a Master.
18. The King may appoint Registrar.
19. Attendances of witnesses and production of papers, &c. may be compelled by *sub-pœna*.
20. Time of appealing.
21. Decrees for Courts abroad to be carried into effect as the King in Council shall direct. The Act not to abridge powers of Privy Council.
22. The Committee may direct the East India Company to bring on appeals from the Sudder Dewanny Adawlut Courts, to a hearing.
23. Orders made on such appeals to have effect, notwithstanding death of parties, &c.
24. His Majesty empowered to make orders for regulating the mode, &c. of such appeals.
25. Power of enforcing decrees in the same way as by 2 & 3 W. 4. c. 93.
26. Nothing herein shall prevent the King's acceding to treaties appointing certain persons to hear prize appeals.

THE DEBATE ON THE LATE INTRODUCTION INTO PARLIAMENT OF THE REAL PROPERTY BILLS.

THE importance of all that relates to the great changes which are projected in the Law of Real Property and the Practice of Conveyancing, renders it desirable to give the statements which were made by the Solicitor General on the recent introduction of the several Bills now before the House of Commons, particularly as the subject has been hardly noticed in the newspapers. The Bills have been referred to a select committee (see the names, *ante*, p. 432); and this step should have been taken long since, as it would have been impossible, in a Committee of the whole House, to have gone into the minute legal details necessary for rendering these measures complete. We cannot approve of the manner in which they were introduced by the learned Solicitor General. He seems to have considered it necessary, in order to obtain the attention of the House, to indulge in statements completely *ad captandam*. Thus he says, that "since the reign of Charles II. no alterations have been made in the laws relative to real property in England, and *all* the grievances which then existed in connection with the subject continue still to subsist, &c." Now we can hardly ascribe an assertion of the kind to ignorance; it must have been made purely for the purpose of *effect*; and we are sorry that, in order to pass these or any other

measures, the House should be thus misled. In the same taste is the allusion to the "twenty" offices necessary for suffering fines and recoveries. No lawyer could make these statements in the presence of his own profession without being laughed at; but to the persons entrusted with the actual reform of our laws, the cause sanctifies any absurdity. We recommend attention to the whole of the speech, as we are anxious to promote all possible discussion on the Bills while they are still on the anvil.

The Solicitor General.—In rising to bring forward a series of measures, for the purpose of making certain alterations in the laws relative to Real Property, I will occupy the attention of the House for a very short time. I must express my regret that so little attention is paid by Honorable Gentlemen, generally, to subjects of this nature, although they are of the greatest importance. In the two last Sessions of Parliament, I have brought forward measures similar to those which I now intend to introduce; but without success. I do hope that I shall be more fortunate in this Reformed Parliament. Often, after I had given notice of my intention to proceed with these bills, when the day came there was no House. At other times, when the order of the day was read, it served as a signal for a general dispersion. I hope that the attention of the House and the country will now be directed to this subject; and that the public will no longer have to complain of the conduct of the House, in not getting rid of the evils to which the present state of the law of property exposes all classes.

Since the reign of Charles II. no alterations have been made in the laws relative to real property in England; and all the grievances which then existed, in connection with this subject, continue still to subsist, and, if possible, are even aggravated by the changes that have taken place during that interval in the state of society. I have now to move for leave to introduce five bills; which, if carried, will, I trust, remove a few of the evils now experienced. The first of these is to abolish fines and recoveries, and to substitute in place of the present system a more simple process, by virtue of which, what is now effected circuitously and at great expense, shall be done by a simple deed. I am sure that I need not tell the House, that the present system of fines and recoveries is a serious grievance to the landed interest. In my

opinion, the whole machinery is unnecessary for the transfer of landed property, and ought to be got rid of. At present, fines and recoveries are carried on as suits at law, and with an enormous and unnecessary expense. Before a fine and recovery can be effected, there are nearly twenty processes, in as many different offices, to be gone through; and there is danger, delay, and expense in each. In a country like this, where every facility should be afforded to the transfer of property, the greatest impediments are thrown in the way of the transfer of such property. As I said before, it is my intention to propose that that shall be done by a simple deed, which is now done by the tedious and expensive process of fine and recovery.

I am aware that the plan which I propose to substitute is not approved of by the Honorable and Learned Gentleman opposite (than whom, there is no man more profoundly versed in the law of the country): I trust, however, that on consideration, he will be induced to support the bill which I intend to introduce on this subject. I hope, that by the manner in which this bill is framed, we shall get rid of a great blot on our system of law.

The next bill, is to regulate the law relative to the Limitation of Actions and Suits relative to Real Property, and to substitute a fixed and general limitation, in place of the present practices. The statutes and usages now in force upon this subject, are barbarous in the extreme. The period of limitation varies in different places, and according to the nature of the property. The limitation is sometimes sixty years, sometimes thirty years, sometimes twenty, and sometimes six years, and in some cases there is no limitation at all; for instance, in cases of advowsons, and property of that nature; and thus families which have been in possession of property for generations are suddenly deprived of it. It is my intention to propose that there shall be a general limitation of twenty years, and that possession for that time shall confer a title.

The next bill which I have to introduce has for its object the amendment of the law of Inheritance. As the law now is, the father cannot inherit through his son. This appears to me to be a great absurdity; but it has been justified on the ground that if the law were otherwise, it would be against the principle of gravitation, which always is to descend, and not to ascend! Again, a brother cannot succeed another brother in an inheritance, if that brother is only of the

half-blood. Thus a father may have two sons by different mothers, and leave his estate to the elder; but the younger son would not, in the case of the death of his brother, succeed him in the possession of the property; but it would in preference go to a stranger. It is therefore my intention to propose, that a father shall be able to inherit from the son, and the half-brother from the half-brother.

The next bill which I wish to introduce, has reference to the law of Dower. As the law now stands, a wife is entitled, on the death of her husband, to one-third of his inheritance. This part of the law, however, is constantly evaded, or rendered useless, by the modern practice of marriage settlements. But the law of dower, also, from its operation, tends to impede the sale of landed property. The practice now is, on the purchase of land, to bar dower; and if this is not done, the purchaser becomes liable to the payment of it. I shall propose that the law of dower shall only take effect on the land the husband dies seised of. When I first proposed this bill in a former Parliament, I was desirous that it should take immediate effect; but in consequence of the opinions then expressed, I have framed my bill in such a manner as to preserve all vested rights. By way, however, of compensation to the woman, I intend to propose that dower shall be paid out of all property in land, instead of being paid out of lands only on certain tenures.

The last of the series of bills will apply to the law of Curtesy. By the existing law, the husband has the whole estate of the wife, whether they have children or not. If the wife have children by a former husband, they are excluded from any participation in their mother's property, except under some very peculiar circumstances. Now I propose, that in case of no issue by a second marriage, the property of the wife shall be fairly divided between the issue of the former marriage and the second husband, as tenants in common. Such are the measures which I have now to propose. I trust that the House will agree with me, that the evils which I have pointed out admit of an easy remedy; and that it will also support me in carrying into effect the alterations which I have suggested. There is one subject more to which I wish to allude. The House is aware that I laboured hard to carry a measure for effecting a General Registration of Deeds. I intended to have brought forward that subject once more; but as I am now connected with the Go-

verment, and some difference of opinion appears to prevail, as to the propriety of carrying such a measure, the Government are anxious to leave the question to the consideration of the House. I have reason to believe, however, that many members of the Government approve of such a measure, and will give it their support.

My honorable and learned friend the member for Southwark has given notice of his intention for leave to bring in a bill for this purpose; to such a bill I will give my cordial and zealous support; and it is my anxious hope and firm expectation, that it will be carried by a large majority of this House. I am sure that such an alteration of the law as is proposed on this subject, would be attended with the greatest public benefit; and to no class would it be more beneficial than to the landed interest. I shall now move for leave to bring in a Bill to abolish Fines and Recoveries, and for the substitution of more simple modes of Assurance in lieu of them; also for leave to bring in a Bill for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto; also for leave to bring in a Bill for the Amendment of the Law relating to Dower; also for leave to bring in a Bill for the Amendment of the Law relating to the Estate of a Tenant by the Curtesy of England; and also for leave to bring in a Bill for the Amendment of the Law of Inheritance.

An Honorable Member.—I wish to ask the Honorable and Learned Gentleman whether he intends that the Bill for the Limitation of Actions shall be made applicable in every case; for instance, in cases of insanity, or residence beyond the seas?

The Solicitor General.—There will be an exception, as to the cases alluded to by the Honorable Gentleman.

Mr. O'Connell.—I wish to know whether these bills—and most useful measures they will prove to be, if carried into effect—are to extend to Ireland?

The Solicitor General.—I should be extremely happy to render any assistance in my power to make these measures applicable to Ireland; but there would be some difficulty in extending their provisions to that country. The Honorable and Learned Gentleman is aware that there is some difference between the law of England and Ireland relative to limitations, particularly in the case of advowsons and others.

Mr. O'Connell.—I am aware that there is a dissimilarity between the laws of li-

mitation in England and in Ireland; but although the objection of the Honorable and Learned Gentleman may apply therefore, as regards that one measure, it does not, as regards the four other bills. I would suggest that Ireland might have the benefit of those bills, which have now so properly been submitted to the House. I must express my sincere hope, that the laws of England and Ireland will speedily be assimilated. No man can be a practical lawyer, without being aware of the inconvenience which this want of similitude occasions. With reference to the bills themselves, I am satisfied that they will remove some of the greatest blemishes in the law of England respecting real property. At present, the titles to estates are materially affected by the defective state of the law. The Honorable and Learned Gentleman will therefore render a service to justice, if he succeed in carrying these bills into effect.

Leave was then given to bring in these bills; and they were severally ordered to be brought in by the Solicitor General and Mr. Pollock.

NOTES OF A SPEECH ON THE GENERAL REGISTRY BILL.

[The following was picked up near Southampton Buildings.]

COMMENCE by apologizing for my ignorance on the subject.

Assure the House, nevertheless, that no one could have been more ignorant about it than my honorable and learned friend the S—— G——. Trust, therefore, that I shall be favoured by a hearing.

Touch slightly on the importance of the Bill; compliment the reformed House; and connect registry with the slave trade, Jews, factory system, and trial by jury.

Allude to France, Germany, Scotland, Ireland, and the King of the Sandwich Islands.

Praise my brother.

Abuse Lord E——.

Abuse Lord L——.

Abuse Lord W——.

Abuse conveyancers, solicitors, and attorneys—harpies, pikes, &c.

[Mem. Take a dose of Cobbett the night before.]

Laugh at petitions—go for nothing, &c.
Praise my brother!

Expose the absurdity of wisdom of ancestors, and tell joke thereupon.

Talk of liberality of present age.

State that I am perfectly disinterested, having no landed property myself.

Declare that one in two titles are unsafe, from the fraudulent suppression of deeds.

Enliven the subject by some slight departures from truth.

Praise my constituents, and allude to the name I bear.

Declare that the opposition to this Bill proceeds from the most sordid motives.

Declare that, on the contrary, its supporters are actuated by the purest principles.

Declare, on the honor of a gentleman, that I am ignorant who is to be the Chief Registrar.

Praise my brother!!

[Mem. Get this fair copied by my copying clerk, sprinkle it well with cheers, and send it to B.]

ON COUNSEL'S SPEECHES FOR PRISONERS.

There are two propositions now before Parliament, respecting the speeches of counsel for prisoners. Mr. Ewart has introduced a Bill for allowing speeches to be made by counsel on the behalf of prisoners, in all cases; and Mr. Godson is desirous of bringing in another, to deprive the prosecutor of the privilege of an address by counsel when at present the prisoner is not entitled to it. We understand that a third suggestion was thrown out on the last Home Circuit by Lord Lyndhurst. This eminent Judge, after mentioning that he was on the whole favourable to giving the full privilege of counsel to prisoners, stated that he thought the counsel for the prosecution should have the option of addressing the jury or of simply examining the witnesses; but that if he made an address, the prisoner's counsel should have a similar privilege. We think that if any change be made in the present system, this last plan is the most advisable. We very much doubt, however, whether any alteration is called for. The assistance of counsel is most important—but its chief value is now employed for the prisoner—in the cross-examination of the witnesses, and the objections in point of law. We do not think that a speech would very much assist him. We have had an opportunity of seeing the speech-system tried in Scotland, and the result was certainly to the disadvantage of

the prisoner, the number of the convictions there far exceeding the present average in England. The attention of the prisoner's advocate, instead of being directed to sifting the evidence and seeing that the prisoner was found legally guilty, was almost exclusively directed to an oratorical display; and we repeat, that the result is not favourable to the prisoner. We do not think the matter of very great importance; but a mistaken feeling of humanity may do more harm than good by an alteration.

NOTES OF THE WEEK.

House of Lords.

LOCAL COURTS.

Our readers will find "a bird's eye view" of the whole of this Bill in our first article, and a verbatim copy, as far as section 55, which includes all the provisions relating to the Court for *Actions*, or as it may be termed, "the Twenty Pound Court." Sections 56 to 62 inclusive, provide for a *Reconciliation* Court. Sections 63 to 71 relate to *Bankruptcy* business in the country; and sections 72 to 97, to *Equity* business. In our next number we shall print the remainder of the Bill.

Advocating, as we avowedly do, the rights and interests of *all* branches of the Profession, we might be justified in opposing this measure on *professional* grounds; but we shall, in the first place, shew in detail the effect of the measure on the interests of the *public*, and the *due administration of justice*. We expect to be enabled to do this fully in our next number. For the present we may notice the remarkable fact, that in an analysis of the Bill published by a weekly contemporary (*The Town*), it is stated (see § 17) that all actions were to be tried "within the jurisdiction where the plaintiff and also the defendant may reside; and in case the plaintiff and defendant should not reside in the same jurisdiction, then the plaintiff might *either* bring his action within the jurisdiction of the defendant's residence, or in *the Superior Courts of Common Law*." These latter words are not in the Bill as now printed; yet it is evident from the structure of the clause as it still remains, that this alternative was originally intended to stand, and that the alteration has been hastily made. This provision, in its present state, therefore, is liable to all the objections which have been often pointed out, as affecting the wholesale dealers in the metropolis and

large manufacturing towns, who have debts owing to them in all parts of the kingdom, and who, according to this bill, must resort with their witnesses to the Court where the defendant resides: as if the defendant were the innocent party, and entitled to the greatest indulgence. This may be bringing justice home to his door, but it is taking it away from those who, in ninety-nine cases out of a hundred, are the parties really injured.

It is worthy of remark also, that in the 18th section, (which precludes costs where the sum recovered in the Superior Courts is no more than 20*l.*), there is a saving of "the power of suing in the Superior Courts *before reserved*," which surely must mean the intended saving in the 17th section. All this shews great haste.

In our first volume, on the first introduction of the Bill, we devoted a very considerable space to the subject of Local Courts. And at p. 9, our readers will find an analysis of the former Bill. At pp. 74, 170, and 275, we gave a full account of the Local Courts of other countries, showing that they have failed wherever they have been tried. At pp. 91, 104, 215, 231, we reviewed all the works published at that time on the subject. At pp. 121 and 140, we described the existing Local Courts. At pp. 145, 177, and 227, will be found three letters on the subject from "A Barrister," whose valuable communications we hope to be able to continue. Thus our readers have already in their possession a considerable body of information and argument on the subject. Our succeeding articles will relate entirely to the present measure.

The second reading has been deferred till the 18th instant.

SUITS AT COMMON LAW.

The second reading of Lord Wynford's Bill, which stood for Tuesday last, has been put off till the first day after the Easter recess.

CHANCERY REFORM.

The Lord Chancellor introduced, on Wednesday last, his Bill "for the Regulation of the Proceedings and Practice of certain Offices, and the Salaries and Fees of certain Officers of the High Court of Chancery in England."

We last week (p. 424) put our readers in possession of the principal points of this important measure. The remuneration of the Masters, as we stated, is to be principally by salary, and not by fees. The only ad-

ditional information which appears by his Lordship's speech, is, that the Masters are to be appointed by the Crown instead of the Lord Chancellor, though the latter will of course recommend the proper persons. This measure, so far as we are acquainted with it, will be very beneficial, both to the Suitors and the Profession.

The Lord Chancellor, in reference to the numerous applications for the appointment of *Local Commissioners of Bankrupt*, stated that these offices were filled on the recommendation of the Judges on their several circuits. We presume, however, the appointments will not now be much coveted, as they will exist only until the "Judges in Ordinary" are appointed.

PRIVY COUNCIL APPEALS.

This Bill, of which we have given an analysis (p. 462), has been read a second time, and committed for the 18th.

House of Commons.

REAL PROPERTY BILLS.

Sir George Grey, Mr. Lyne, and Mr. Phillpotts, have been added to the Select Committee,—the meetings of which commenced on Monday last, and have been adjourned till the 11th instant.

PAROCHIAL REGISTRATION.

Mr. Wilks, after an able statement, obtained a Select Committee, to consider and report on the general state of Parochial Registries, and on the Laws relating to them, and on the General Registration of Births, Baptisms, Marriages, Deaths, and Burials, in England and Wales, with power to send for persons, papers, and records.

IMPRISONMENT FOR DEBT.

The Solicitor General has given notice of a Bill "touching Imprisonment for Debt, and the Law of Debtor and Creditor," for the first open day after Easter.

LUNATIC COMMISSIONS.

The Committee on this Bill has been deferred until the 17th instant.

ARTICLES OF CLERKSHIP.

The usual Indemnity Bill has been brought in, to permit the filing of affidavits of the execution of Indentures of Clerkship to Attorneys and Solicitors, which have been omitted to be filed within the time limited.

LAW OF LIBEL.

A Bill to alter and amend the Laws respecting Libels, has been read a first time, and ordered to be read a second time on the 26th instant.

SEWERS.

The second reading of this Bill has been deferred.

JUSTICES OF THE PEACE.

This Bill has been committed for the 15th instant.

THE EASTER SESSIONS.

In a former page (273) we stated that the almanacks had fixed Monday the 1st of April for the commencement of the next Easter sessions; but that, it being enacted by the 1 W. 4. c. 70. § 35, that this should be held "in the first week *after* the 31st of March," which could only mean the first *whole* week, they should commence on Monday the 8th of April. This has been settled according to our opinion, and the Quarter Sessions throughout the country commence on Monday next.

SITTINGS OF THE COURTS.

EQUITY.

The Lord Chancellor, Master of the Rolls, the Vice Chancellor, and the Chief Baron, have adjourned till the first day of Easter Term.

COMMON LAW.

In the Exchequer of Pleas, new causes only will be tried during the Term. The remanets will not be taken till after Term. The first sitting in London is fixed for the 22d, and in Middlesex for the 24th instant. The Sitting Papers will be printed in our next.

MISCELLANEA.

ANCIENT COURT OF "RECONCILEMENT."

It is reported of a covetous churle, who sorrowed extremely, for that he had lost a purse with one and twentie angels in it. But an honest man having found the same, of meere conscience delivered it to the same churle, who not once thanking him that was the bringer, fals to account his coine, and finding onely

twenty angels in the purse, with great rigour exacted the odde angel, and because the honest man denied the finding thereof, he convented him before a magistrate of a corporation, whose wealth and authoritie far exceeded his wit (as in such places commonly happeneth, for that affection and simplicitie be their ordinary electors). The plaintiff swereth, there were one and twentie angels in the purse which he lost: the defendant that there were onely twentie in that which he found: whereupon the magistrate pronounced, that the purse found was not the plaintiff's, and therefore adjudged him to restore unto the defendant the purse with twentie angels, leaving the plaintiff to good fortune for the finding again of his purse with one and twentie angels. I think a man may trie a thousand fooles in the like cases, before he receive the like sentence.—*West's Symbol.*

THE EDITOR'S LETTER BOX.

. We have been repeatedly urged by our Country Subscribers, to stamp a *part* of our impression for their benefit, and thus enable them to have our publication by the post, immediately. We might do this, by increasing the charge of that portion of our impression to 10d.; and we will do so, if our country friends will inform our publisher whether they would prefer it; but it is obvious that a sufficient number must agree to it, to enable us to meet the additional risk and expense.

The length of the Local Courts Bill,—the greater part of which we have deemed it necessary to insert immediately,—has compelled us to defer our Reports, Queries and Answers, as well as many other articles, pressing for insertion. We have been obliged also to postpone several Reviews of Books recently published.

We are indebted for the papers and plans relating to the New Courts, Judges' Chambers, and Record Depository, and hope to find room for a full notice of them in our next number. We are glad that the affair appears to advance.

The statements relating to the proposed adjournment of the Assizes from Lancaster to Liverpool and Manchester, shall have the earliest possible attention.

We shall be happy to receive the proposed observations of "A Subscriber," of Furnival's Inn, on the Defence by Counsel of Persons accused of Felony.

We thank a Correspondent for some further intelligence of the Sheriffs' Courts; but must reserve it for the Supplement.

"A Country Subscriber" is informed that the Monthly Record (of which two Volumes are complete) is not discontinued, but incorporated in the Monthly Supplement.

"M. Philo L. O." will observe, that the subject of his letter (for which we are obliged,) was anticipated last week.

Erratum.—p. 452, for 21s., the price of Mr. Dax's Practice, read 16s.

The Legal Observer.

Vol. V.

SATURDAY, APRIL 13, 1833.

No. CXXXV.

———"Quod magis ad Nos
Pertinet, et nescire malum est, agitamus."

HORAT.

LETTERS TO THE LORD CHANCELLOR.

LETTER XI.

ON THE REVIVAL OF THE LOCAL COURTS BILL.

My Lord,

WHEN the Local Court Bill was first introduced by your Lordship, I had the honor of addressing you on the subject in this publication^a. I ventured to point out the effect which the measure, if passed, would have on your own profession, and on the public. I took the liberty of examining the details of the plan, and of showing, that there could be no reasonable expectation of their success. The sentiments respecting it, which I then expressed, were not confined to myself: they were simply those which were likely to strike any person capable of reflecting carefully on the measure; they were urged as well by others as by me; and such as they were, they (at least for the time) prevailed, and the Bill was withdrawn by your Lordship.

Since that step was taken nearly two years have elapsed; and as your Lordship has hardly mentioned the subject, it was generally considered that the project was abandoned; your better friends had hoped, that the reasons against the measure had at last reached your Lordship, and that if one wished to find the Bill, it must be sought on the winged horse of Astolpho, where the lost wits of Orlando were found, among the idle projects of the hour—

"L'inutil tempo, che si perde in gioco !
E l'otio lungo d'huomini ignoranti
Vani disegni che non han mai loco."

This opinion was reduced almost to certainty by the part which your Lordship has recently taken in the introduction, if not in the preparation, of the recent measures for the Amendment of the Law. It was reasonably concluded, that you had seen the evils of any sudden and violent change; that you were willing to proceed gradually in the great work of legal reformation; at any rate, that you were content to give a fair trial to that mode of change, before attempting any sweeping measure which would alter the administration of justice throughout the country. It was with this understanding that the profession submitted with cheerfulness to the recent acts which have introduced changes so material in the common law of the country, and which have borne so hardly on the peculiar interests of the practitioner. The better part of the profession was ready to give all possible aid to every reasonable alteration, without reference to the manner in which they were themselves affected. They trusted implicitly to those who had introduced them; they reposed a confidence on the Judges of the land that they had the real interests of the country at heart, and they submitted to the change without a murmur. They saw the old law of process (a very considerable source of profit) entirely altered; they saw many other parts of their most lucrative business either materially injured or entirely swept away; and they have seen, within

^a See 1 L. O. 145, 177, 227.

the last few weeks, a bill introduced by your Lordship, for subjecting the whole system of special pleading to the pruning knife. These, it would have been thought, were changes sufficient for some time. A single other alteration—the abolition of legal sinecures—would have relieved the suitor in the Superior Courts from all the great burthens that now press on him. At any rate, if it were necessary to introduce these measures, it would seem reasonable to give them a fair trial. They have for their object the benefit of the suitor, by lessening the expense and delay of the old system. They have been introduced and described by your Lordship as calculated to have this effect. Imagine, then, the wonder of the profession when, at the time of their introduction, another measure is brought in, which is intended to set them aside to a very great extent, before they have been tried! Imagine the curious effect produced by your Lordship having hardly finished praising one nostrum, before you begin in a more glowing strain of eulogy to recommend another of quite a reverse effect! Imagine the absurdity of one week proposing one plan, and the next proposing another of a totally different nature! And what, my Lord, is the scheme most favoured by your Lordship? It is, in so many words, the revival of your plan, already abandoned, for the establishment of Local Courts!

It is my firm intention to examine the principle and the details of every part of this extraordinary measure. I promise to go through it inch by inch, and to devote every moment to its consideration; but I must confine my present letter to one single reflection and its illustration, which has irresistibly forced its way before all others on the introduction of this bill. I confess it appears to me a little singular, that all the measures individually proposed by your Lordship should either benefit yourself, or throw patronage into your own hands. Permit me to state the well known facts as to this.

When your Lordship accepted the great seal, two years and a half ago, there was a wide plan of legal reform laid down and proposed by your Lordship. The Courts of Equity, the Common Law Courts, and the Ecclesiastical Courts, were all faulty, and all, according to your Lordship, called aloud for alteration. It was therefore to be supposed that much would be done by yourself, when your hands were clothed with power, in effecting the good work of reformation. It was also expected, from the great reliance

placed on your good faith and integrity, that those portions of your plan of reform would be, at any rate, at first selected, which would impose no additional burden on the country; which were quite unquestionable; and which could have no alloy from any doubt of the motives for their introduction. You had so long been the victorious opposer and exposé of all schemes for increasing the patronage of office—you had so frequently reprobated the creation of new places—that what you had so vehemently eschewed, out of office, it was considered you would equally dislike even when the appointments were to be placed at your own disposal. Let us see how far this expectation has been realized. I trust it may not turn out that the measures introduced by your Lordship have all either benefited you individually, or placed patronage at your disposal. Let us see, then, what has been done by your Lordship in the cause of Law Reform, since your acceptance of office.

The first proposal made by your Lordship as Chancellor was this very Local Courts Bill, of which more anon.

Your Lordship's next proposal was the well known Bankruptcy Court Act, which you succeeded in carrying. By this measure, as I have already shewn in a former letter^b, your Lordship abandoned four offices of about 300*l.* a-year, and obtained the whole of the patronage of the new Court; (that is to say) four judgeships, six commissionerships, ten registrarships, &c. &c. all of which have been already sufficiently detailed. I do not say that these appointments were improperly disposed of, because your Lordship's personal and political friends may also be very proper persons; but I may observe, that the new Court has certainly answered neither the public expectation nor your own; you have yourself candidly admitted the Court of Review to be a failure, and know not how to employ the curious mechanism you have invented. Your Lordship has properly abstained from filling up the vacancy left by the death of Sir A. Pell. You have left the other learned Judges to share their present laborious leisure between them, without the intrusion of a fourth. Thus passed your Lordship's first year.

In the second, two measures were particularly pressed by your Lordship—your compensation for the patronage you had lost, or would lose, and the fixing a permanent salary on your office. Your Lordship's good fortune enabled you to succeed

^b See 2 L. O. 385, 387.

in both. Your retiring salary was raised to 5000*l.* a-year, and your official salary was settled at 14,000*l.* a-year. Thus passed your Lordship's second year.

The third year of your Lordship's Chancellorship has now run half its course, and until very lately nothing has been said or done by your Lordship as to Law Reform. Within these few weeks, however, you have introduced the Law Amendment Bill, and the Local Courts Bill. The first is not your own measure, but that of the Common Law Commissioners. The last is introduced on your Lordship's responsibility. This bill, it must be admitted, throws even the Bankruptcy Court Act into the shade, with respect to the immediate patronage which it bestows on your Lordship. Place after place rises under it in magnificent accumulation. Some sixty Judgeships, with 2000*l.* a-year each; some sixty Registrarships, with 500*l.* a-year each; Clerkships and Assigneeships without number, and a cloud of minor offices, appear in the distance! So vast a haul of loaves and fishes is enough indeed to make a placeman's mouth water! If this bill passes they will come in a shower! A smile from your Lordship would be instantly transmutable into gold! Oh! happy Chancellor, and fortunate friends! Come forth, ye long delayed band of expectants, from all quarters of the kingdom, here will ye find enough and to spare for you all! Select, dear friends, what suits you best; if one thing will not, another will; and at least it will not be your Lordship's fault if any go empty away. Thus has passed your Lordship's fifth half year!

And is this really all that has been either done or proposed? it may be asked, by a disappointed admirer of your Lordship. No, my Lord, I must in candour own, that your Lordship has abolished half a score of petty offices in the Court of Chancery (for which, however, you insisted on compensation); that your Lordship has made some slight changes in the law relating to the service of process in Ireland; that your Lordship has made several speeches on the subject of Chancery Reform, and printed sundry bills about the same; but I must also, in fairness, remind your Lordship, that of the vast scheme of Law Reform proposed by you, I have now stated all that has been even attempted.

Suppose then, my Lord, that we were now detailing the official acts of any other statesman: suppose we had proved that every important measure brought in by him went either to benefit himself personally, or bring official patronage to his hands, would

not another measure having the same objects, be exposed to some question? Would it not excite some surprise? Would not such an *accident* produce a little wonder? Would not his motives be somewhat suspicious? Would not it be said that a desire of patronage peculiarly distinguished the statesman? Would the measure be set down entirely to a desire to benefit his country? Would not the motives of its introducer be exposed to some doubt? I confess, so long as human nature is as it is, your Lordship must not expect that a bill, which in another person would at once be denounced as a job, can escape some evil construction. If I heard that the immense patronage of this bill were to be distributed by the Chief Justices of the Common Law Courts, the Master of the Rolls, and the Vice Chancellor, (these Judges being generally better acquainted with the particular qualifications of the Bar than a Lord Chancellor, from his other duties, can be,) I should have been ready at once to acquit your Lordship of any unworthy motive; but when I find that the present Local Courts Bill is in perfect consistency with your Lordship's other measures, for increasing your own power, patronage, and influence, I must be permitted to say, that the motives for its introduction must remain subject to doubt; and that if the bill stands as at present, your Lordship's character for disinterestedness and fair dealing, must greatly suffer.

But, within these few days, I have heard it said, that you have carelessly given away one of the brightest jewels of your office—the appointment of the Masters in Chancery. What, however, is it that you propose?—that the appointment shall be in the Crown; but under the advice of whom? Why, according to your Lordship's own statement, of the Great Seal. The Chief Judge in Equity is *not* to have it, but the Keeper of the Great Seal, the Cabinet Minister, is. Now, my Lord, so long as you hold both offices, you will, of course, retain the appointment: but your Lordship, with your accustomed foresight, has seen that a separation may be made of the political from the judicial duties of the office. By this proposal, therefore, you prudently secure to yourself the undisputed possession of the best patronage of the Chancellorship, and in a most ingenious manner. By a happy dexterity, your Lordship makes a benefit to yourself an apparent favour to the country; at the time you are binding patronage still faster to yourself, you appear to be giving it away! No one can suffi-

ciently praise your Lordship's cleverness, and almost prophetic clear-sightedness; equally, I presume, should we admire your candour, and the entire absence, so conspicuous in your Lordship, of any attempt to obtain undeserved praise.

I have the honor to be,
My Lord,
Your Lordship's most humble servant,
A BARRISTER.

Lincoln's Inn, April 10, 1833.

THE NEW BILL FOR LOCAL COURTS.

[Concluded from p. 462.]

COURT OF RECONCILEMENT.

56. That it shall be lawful for any person who hath or shall have any claim or demand against any other person, either at law or in equity, in respect of any debt, or matter in the nature of debt, to cite the person against whom he has or shall have such claim or demand to appear before the Judge in Ordinary having jurisdiction where such person being the adverse party resides, to have the matter in dispute, or which may come into dispute between them heard and advised upon by the said Judge, which hearing and advice shall be called Proceeding for Reconciliation; and such Judge shall appoint the times when and the places where he may please to sit and hold his Court of Reconciliation, provided that such Court of Reconciliation shall be holden at a convenient time during or after the ordinary sittings of the said Judge in each place within his jurisdiction, notice being previously given thereof in some newspaper circulating within his jurisdiction.

57. That the party citing shall first obtain leave from the said Judge to come before him at the time and place to be named in the citation, and shall serve the citation on the other party two weeks at least before the said time of appearance; and the citation shall state shortly the matter of the claim or demand which the person citing hath against the other party, with the time and place whereat the Judge in Ordinary is to sit and hear and advise in the matter.

58. That the party so cited shall, at his own election, appear or not before the said Judge, but he shall, within one week after being so cited, serve the party citing with a notice, in which notice he shall state whether he intends to appear or not; and such notice, with the proof of service of citation, may be given in evidence against the party cited in any suit at law or in equity which may be brought by the party citing, for the purpose of proving that the party cited refused to appear before the

Judge in Ordinary in a Court of Reconciliation.

59. That when the party citing has received notice from the other party that he intends to appear, he shall give notice thereof to the Registrar of the Judge five days before the time appointed for hearing and advising; and the parties shall at such appointed time appear personally, and without any attorney or counsel, before the said Judge; and if either party shall fail to appear, he shall pay reasonable costs to the other party appearing, to be taxed by the Registrar, and to be levied by a writ of *fieri facias*, in like manner as costs are hereinbefore directed to be levied; and if neither party shall attend, and neither shall give three days notice of intending not to attend, both parties shall pay such reasonable fine as the Judge shall impose, to be levied in the manner last mentioned.

60. That when the parties appear before the Judge in Ordinary, he shall hear them state the matters of their respective claims or demands, and defences or answers, in the presence of each other, and shall give them his opinion and advice thereupon; and it shall be in their option to follow and abide by this advice or not, as they shall think fit; and in case they shall agree to abide by such advice, the substance thereof shall be reduced into writing by a memorandum, which shall be signed by the parties, and entered in a book of the registrar, to be called "The Reconciliation Book;" and such memorandum shall be final and binding on the said parties, and shall have the effect of a covenant under seal in all courts whatever, and an examined copy thereof may be given in evidence; and the party to whom any sum of money is by such memorandum agreed to be paid shall have execution, as in the case of a judgment in an action before the Judge in Ordinary, for such sum against the party agreeing to pay, and not paying it at the time agreed upon in such memorandum; but if a party shall have agreed to do any other thing, and shall fail to do it, the other party shall not have execution, but shall and may sue upon such memorandum of agreement, and for breach of it, as upon a covenant under seal, and for breach of such covenant: Provided always, that it shall be lawful for the Judge in Ordinary before whom the parties shall have appeared, after he shall have heard and advised upon the matter by them stated, to adjourn, if he think fit, the further consideration thereof to the next sitting of the Court of Reconciliation, at which sitting the said parties shall declare whether or not they are minded to abide by his advice.

61. That when any parties shall have been heard in any matter before any Judge in Ordinary sitting in a Court of Reconciliation, and either of the said parties shall sue the other upon the same matter before the said Judge by way of action, such party shall annex to his statement a notice, to be filed with the registrar along with the said statement, that the cause of action is some matter already heard before the said Judge; and if the party suing

shall omit to annex such notice, the party sued may annex it to his answer; and the registrar, upon such notice being so annexed by either party, shall make out a certificate of the matter thereof, whereupon the proceedings before the said Judge shall cease, and the matter of the said suit shall and may be carried before a Judge in Ordinary of some adjoining county, notwithstanding that the party sued shall not reside therein, any thing in this act to the contrary thereof in anywise notwithstanding; and the costs incurred by beginning the proceedings before the first-mentioned Judge in Ordinary shall be costs in the cause.

62. That no agreement or memorandum or other document or proceeding authorized or required by any of the provisions of this act shall be liable to any stamp duty.

BANKRUPTCY BUSINESS.

63. And whereas an act was passed in the Session of Parliament holden in the first and second years of the reign of his present Majesty, intituled "An Act to establish a Court in Bankruptcy:" And whereas it is expedient that provision be made for the more effectual administration of the laws relating to fiats to be prosecuted elsewhere than in the Court of Bankruptcy; Be it therefore enacted, that it shall be lawful for the Lord Chancellor, and also for the Master of the Rolls, the Vice Chancellor, and each of the Masters of the Court of Chancery acting under any appointment by the Lord Chancellor to be given for that purpose, when and as each of them shall see fit, to issue a fiat or fiats in bankruptcy, not directed to the Court of Bankruptcy, to any Judge in Ordinary to be appointed under this act, and that such Judge so to be named in any such fiat shall have, perform, and execute all the powers, duties, and authorities now vested in one or more Commissioners of Bankrupts acting under any fiat not directed to the said Court of Bankruptcy.

64. That it shall be lawful for the said Lord Chancellor, Master of the Rolls, Vice Chancellor, and each of the Masters of the Court of Chancery acting as aforesaid, if they shall respectively think fit, to insert in any such fiat as aforesaid, in addition to the name of such Judge, the name of some one barrister or solicitor residing at or near the place where such fiat is to be prosecuted, who, in the event of the death or sickness of the Judge named therein, (such death or sickness to be certified in writing by the registrar of the court over which such Judge shall preside, and the certificate filed with the proceedings under the fiat,) shall have, perform, and execute all the powers, duties, and authorities as a Commissioner of Bankrupt under such fiat, which by virtue of this act shall be then vested in such Judge: Provided always, that no such Commissioner shall be capable of acting in the execution of any of the powers and authorities given by this act until he shall have taken the oath by law required to be taken by Commissioners of Bankrupt in the presence of the said Judge or

of the registrar of the said court, which oath they are hereby respectively empowered and required to administer.

65. That there shall be paid to such Commissioner for every meeting held by him under this act by the said registrar the sum of two pounds, besides his travelling expenses, if any, which payments such registrar is hereby authorized and required to make out of the monies which shall come into his hands by means of the fees or sums of fourteen pounds hereinafter mentioned.

66. That the Lord Chancellor shall have the power to appoint any number of official assignees to act as well in existing as in all future bankruptcies to be prosecuted elsewhere than in the Court of Bankruptcy; and such assignees shall be chosen from amongst merchants or others residing in any part of the United Kingdom, as to the said Lord Chancellor shall seem fit, and shall have all the powers and authorities and be subject to all the provisions and penalties regarding official assignees contained in the said recited act, except so far as the same may be altered or varied by this act, or by any general orders, rules, or regulations which may be made and signed by the Lord Chancellor, as hereinafter mentioned; and that it shall be lawful for the Lord Chancellor from time to time to make such general orders, rules, and regulations for the investment, transfer, payment, and delivery of any stock, monies, or other effects of any bankrupts to be possessed by such assignees, or for any other purpose regarding the said assignees, as to him the said Lord Chancellor shall seem fit.

67. That when and as often as an official assignee shall, by virtue of this act, be appointed under any now existing commission or fiat, all the real and personal estate of the bankrupt under such commission or fiat shall, immediately on such appointment, vest in such official assignee jointly with the existing assignees, if any, in the manner directed by the said before-recited act.

68. That in lieu of fees payable to Commissioners of Bankrupt under fiats not prosecuted in the said Court of Bankruptcy, there shall be paid to the registrar acting under the Judge to whom any fiat shall be directed under this act by the official assignee of each bankrupt's estate, and where no official assignee shall be appointed then by the assignees of such bankrupt's estate, out of the first monies that shall come into his or their hands, and immediately after the choice of assignees by the creditors, the sum of fourteen pounds, to be paid and applied by the said registrar in manner hereinafter directed concerning other monies to be received by him; and also such further sum of money, not exceeding six pounds, as the Lord Chancellor shall, by virtue of such general orders, rules, or regulations as aforesaid, think fit to order and direct to be so paid; and that such last-mentioned sums shall be paid by the said registrar as often as the said Judge shall direct into the Bank of England, to the credit of the Accountant General of the

High Court of Chancery, to the account intituled "The Secretary of Bankrupts Compensation Account:" Provided always, that when any new fiat shall issue by virtue of this act in cases where assignees of the bankrupt's estate shall already have been chosen, there shall be paid to the said registrar by such assignees, in lieu of the sums hereinbefore mentioned, the sum of three pounds for every meeting to be held under such renewed fiat, and be paid and applied by the said registrar in manner hereinbefore referred to touching the said sum of fourteen pounds.

69. That in all cases of commitment by any Judge or Commissioner acting by virtue of this act in any case of bankruptcy, such Judge or Commissioner shall at the time of such commitment deliver to the party committed a true copy of the warrant of commitment, certified under his hand; and it shall be lawful for the party committed to apply to the Court of Review for his discharge on the production of such certified copy to the said court, after having given reasonable notice of such his intended application to the solicitor acting in the prosecution of the fiat or commission under which such commitment shall have been made; and the said court shall have the like power and authority to proceed upon such certified copy of warrant, and to discharge out of custody the party so committed, if such court shall so think fit, without the party committed being brought up before such court, as though such party had been so brought up by writ of *habeas corpus*.

70. That in all such cases an appeal, at the instance of the party committed, shall be to the Lord Chancellor from the decision of the Court of Review, to be preferred in such manner as is provided in cases of appeal in the said recited act.

71. Provided always, that nothing herein contained shall exclude the party committed from his right to proceed in the first instance by writ of *habeas corpus*, if he shall think fit.

EQUITY BUSINESS.

72. That it shall and may be lawful for the Lord Chancellor, Master of the Rolls, and Vice Chancellor, in any cause or matter which shall be brought before them respectively, and for the Lord Chief Baron of his Majesty's Court of Exchequer, or any of the Barons of the said court, in any case or matter depending before such Lord Chief Baron or other Baron, by virtue of an act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled "An Act to facilitate the hearing and determining of Suits in Equity in his Majesty's Court of Exchequer at Westminster," when it shall appear that any accounts or inquiries that may require to be taken or made in any such cause or matter may be more effectually taken or made by means of a *viva voce* examination of witnesses or parties in the country, to direct that such inquiries or accounts, or any portion thereof, shall be taken or made by one of the said

Judges in Ordinary, and to give such directions as to the time and mode of taking the same as shall be deemed expedient.

73. That in case any of the parties who are authorized to attend before any Master in Ordinary of the High Court of Chancery, or before any Master of the said Court of Exchequer, on the taking or prosecuting any accounts or inquiries now pending or which shall be hereafter pending before any such Master, shall desire that any of such inquiries or any of such accounts shall be taken by one of the said Judges in Ordinary, and such Master shall certify to the Judge by whom such inquiries or accounts were directed to be made or taken that the same can be more effectually taken or made by means of a *viva voce* examination of witnesses or parties in the country, and that it will be for the benefit of the parties interested that the same should be taken or prosecuted before one of the said Judges in Ordinary, it shall and may be lawful for such Judge of the High Court of Chancery or of the Court of Exchequer, on motion or petition on notice, if he shall see fit, to refer such inquiries or accounts, or any of them, or any portion thereof, to one of the said Judges in Ordinary, and to give such directions as to the time or mode of prosecuting such inquiries or taking such accounts as shall be deemed expedient.

74. That every order of any such Judge of the High Court of Chancery or Court of Exchequer, so far as the same shall direct that the taking of such accounts, or the prosecution of such inquiries or inquiry, shall be before a Judge in Ordinary, shall be final: Provided nevertheless, that the Judge who may have made such order of reference may, on rehearing, reverse the same, and that any party shall be at liberty to appeal from the said order altogether, or from any other of the directions therein contained.

75. That in every case where any accounts or inquiries shall be referred to a Judge in Ordinary under the authority of this act, such accounts shall be taken and inquiries prosecuted according to the same rules and in the same manner as if the same had been referred to a Master of the court in which the cause or matter shall be pending, excepting so far as the same may be varied by this act, or by any rules and orders to be made by the Lord Chancellor or Lord Chief Baron respectively in pursuance thereof.

76. That the said Judges in Ordinary shall be at liberty to examine witnesses and parties *viva voce*, in such and the same manner as the Masters in Ordinary of the High Court of Chancery are authorized to do by the rules and orders of the said High Court of Chancery; and that a subpoena for the attendance of any witnesses to be examined *viva voce* before any such Judge in Ordinary shall issue from the proper office for issuing subpoenas of the court in which the cause or matter on which such reference shall be made shall be pending.

77. That the attendance and examination of every such witness and party shall be enforced in the same manner as before a Master

in Ordinary of the said High Court of Chancery.

78. That the evidence and examinations to be taken on such *voir dire* examination shall be accurately taken down by such Judge in Ordinary; and that the evidence and examinations taken before any such Judge in Ordinary, whether taken *voir dire* or on interrogatories, and the affidavits, if any, carried in before him, shall be filed or deposited, together with the report of such Judge in Ordinary, in the proper office for filing reports in the court in which the cause or matter on which such reference shall have been made is pending, to be produced from time to time as the Court shall direct.

79. That no person shall be compelled or required to take any copy of any such report, or of the depositions, or evidence or evidences, or affidavits filed therewith; and that any person shall be at liberty to inspect the same, and to take a copy of any part of any such report, depositions, evidence, or affidavits, that he may require.

80. That no person shall be required to take any copy of any paper or writing or document brought in before such Judge in Ordinary, or of any deposition or examinations taken before him; and that any party shall be at liberty to inspect and take a copy of any part of any such paper or writing or document, depositions or examinations.

81. That the finding of any Judge in Ordinary in any matter referred to him by virtue of this Act, unless the Court shall otherwise specially direct, shall be open to appeal in the same manner as a general report of a Master of the Court in which the cause or matter in which such reference is made shall be pending; and that the same rules shall be observed in regard to objections and exceptions to such reports, and in regard to the confirmation or reviewing of such reports, and all other matters relating thereto, as are in force in regard to the general reports of the Masters of such Court, excepting as far as the same may be varied or altered by this act, or by any rules or orders to be made by the Lord Chancellor or Lord Chief Baron respectively in pursuance thereof: Provided nevertheless, that the Court shall be at liberty to give such directions in regard to the mode in which the reports to be made by any Judge in Ordinary, by virtue of any reference to be made by virtue of this act, shall be dealt with, as the circumstances of the case may require, and as may be deemed expedient.

82. That after any report of any such Judge in Ordinary shall have been absolutely confirmed, any party interested shall be at liberty to set down the same before the Judge who directed such reference, under such rules and regulations as the Lord Chancellor and Lord Chief Baron respectively, by any general order or orders to be issued by them, shall direct; and thereupon such orders shall be made in regard to the matters found by such Judge in Ordinary as such Judge of the High Court of Chancery, or Judge of the Court of Exchequer respectively, shall direct.

83. That the said Judges in Ordinary shall be and they are hereby authorized to administer all oaths, and to take all affirmations and attestations of honour, in all causes and matters depending in the High Court of Chancery or before any of the Judges thereof, or before the Lord Chief Baron or any Baron of the said Court of Exchequer by virtue of the said act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, which have been hitherto administered or taken by the Masters Extraordinary of the High Court of Chancery, and by the Commissioners appointed by the Lord Treasurer, Chancellor, and Barons of the Exchequer, or any two of them, under an act passed for that purpose in the twenty-ninth year of the reign of king Charles the Second, and to do and perform in every cause or matter depending in his Majesty's High Court of Chancery, or before the Lord Chief Baron or any Baron of the said Court of Exchequer under the said recited act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, all and every the duties which can or may be done by or before the Masters Extraordinary of the High Court of Chancery.

84. That the said Judges in Ordinary shall be and they are hereby authorized to take pleas, answers, disclaimers, and examinations in every matter pending in the High Court of Chancery, or before any of the Judges thereof, or before the Lord Chief Baron or any other Baron of the said Court by virtue of the said act passed in the fifty-seventh year of the reign of his late Majesty King George the Third; and that the said Judges in Ordinary shall be and they are hereby authorized to administer the requisite oaths, and take the usual affirmations and attestations of honour, for that purpose, and that it shall not be necessary that any commission should be issued, nor shall any commission be issued, to such Judge in Ordinary for the purpose aforesaid.

85. That the said Judges in Ordinary shall be at liberty, and they are hereby required, without any commission or other authority, to examine all witnesses brought before them in all causes depending in his Majesty's High Court of Chancery, or in the said Court of Exchequer as a court of equity, where such witnesses might be examined before one of the Examiners of the said Courts respectively, or before Commissioners appointed to examine witnesses in the said courts respectively.

86. That any party in any such cause shall be at liberty to have his witnesses examined before any such Judge in Ordinary, in the same manner and according to the same rules as if such witnesses were examined before one of the Examiners of the High Court of Chancery, or before an Examiner of the Court of Exchequer, or before Commissioners for the examination of witnesses in the said Courts respectively, excepting so far as the same are varied by this act, or shall be varied by any general order or orders to be issued by the Lord Chancellor or Lord Chief Baron respectively in pursuance thereof.

87. That it shall and may be lawful for such Judge in Ordinary, at his discretion, on the examination of any witness before him, to put any questions in writing to any such witness, and such witness shall be bound to answer the same in the same manner as if the same were contained in the written interrogatories delivered by the parties; and the said Judge in Ordinary shall annex such written interrogatories, signed by him, to the interrogatories delivered by the parties, and the same rules shall prevail in regard to the depositions so taken as are now in force in regard to depositions of witnesses taken in the said Courts respectively, unless the Lord Chancellor or Lord Chief Baron respectively shall by any general order or otherwise direct.

88. That it shall and may be lawful for any such Judge in Ordinary to call on the parties on both sides, or the solicitor or agents of the parties on both sides, to be present at such examinations, or any part of such examinations, as he may think fit.

89. That the Lord Chancellor and Lord Chief Baron shall, by a general order or orders to be issued by them respectively for that purpose, direct by what conveyance, and to and by what officer of their said respective Courts, or other person, such interrogatories and depositions, and all pleas, answers, disclaimers, and examinations taken by or before the said Judges in Ordinary shall be sent and delivered, and as to the mode in which the same shall be filed or recorded or deposited in the proper offices for that purpose.

90. That the attendance and examination of witnesses to be examined before the said Judges in Ordinary shall be enforced in the same manner and according to the same rules and regulations as the attendance and examination of witnesses is enforced before Commissioners appointed for the examination of witnesses in the court in which the cause in which such witnesses are brought to be examined is pending, save and except so far as such rules and regulations may be altered or varied by any general order or orders to be issued by the Lord Chancellor and Lord Chief Baron respectively.

91. That the Lord Chancellor and Lord Chief Baron respectively shall be and they are hereby authorized to make and issue such general order or orders as to the mode of the examination of witnesses and taking of evidence before such Judges in Ordinary, in causes and matters pending in their respective courts, as to them may appear expedient and proper; and the same shall be thenceforth, or until the same shall be altered by a like general order or orders, acted upon and followed, notwithstanding any usage or practice at variance therewith may prevail in their respective Courts.

92. That it shall and may be lawful for the Lord Chancellor and Lord Chief Baron respectively, and they are hereby required, by any general order or orders to be issued by them respectively, from time to time to make such other rules and regulations as they may

respectively think fit and proper for carrying this act into execution, so far as regards proceedings in their respective courts.

93. That it shall and may be lawful for the Registrars of the said Judges in Ordinary, or their clerks respectively, for the business done by such Judges in Ordinary and Registrars and clerks respectively, by virtue of this act, in causes or matters depending in the High Court of Chancery, or before any of the Judges thereof, or in his Majesty's Court of Exchequer as a court of equity, or before any Judge of such court by virtue of the aforesaid act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, to demand, receive, and take the several fees specified in the schedule marked () to this act, and no more, under such rules and regulations as the Lord High Chancellor shall from time to time direct; and that all such fees shall by them be carried to the account of the said fee fund, and be paid into the Consolidated Fund of the United Kingdom of Great Britain and Ireland, in like manner as is hereinbefore directed in regard to the other fees payable by this act.

94. That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant may plead the general issue, and give this act and the special matter in evidence; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant; and if the defendant shall recover a verdict, or the plaintiff shall discontinue or become nonsuit, or judgment be in anywise given against him, such defendant shall recover his full costs as between attorney and client.

95. That whenever in this act any word or words have been used importing the singular number or the masculine gender, the same shall be understood to include several matters of the same kind as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it hath been otherwise specially provided, or there be something in the subject or context repugnant to such construction.

96. That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all Courts and Judges, without being specially pleaded.

97. That nothing in this act contained shall extend to Scotland or Ireland.

THE SOLICITOR GENERAL'S BILLS.

No. II.

INHERITANCE^a.

THE Solicitor General's bill relating to the law of Inheritance or Descent, is chiefly intended to remedy some of the rules of the common law which are generally considered harsh and unnecessary, and the reasons for which have now ceased to operate. We shall shortly mention the proposed changes.

By the common law, an ancestor, to be enabled to transmit lands by descent, must have had the actual seisin of them, if they were in their nature capable of such seisin; a mere right to enter was not sufficient. This rule it is proposed to alter, and to consider a person entitled to transmit lands by descent, whether he was actually seised thereof or had a mere right to enter on them.

By the present law, if a testator devised lands in fee or in tail to his heir, he took by descent as heir, and not as devisee, and held the lands discharged from the debts of the testator. By the present bill it is proposed to enact, that the heir entitled under a will should take as devisee, and that a limitation to the grantor or his heirs, shall create an estate by purchase.

By the present law, although lands, if derived from a special ancestor, will descend according to a special line of descent, yet no person can *limit* an estate to a person and his heirs on the part of a particular ancestor. It is proposed by the present act to enable any person so to limit lands; in which case the descent shall be traced as if such ancestor had been the purchaser thereof.

At present, if the line of the ancestor from whom the land is derived shall entirely fail, it will escheat. If the present bill passes, in such a case the last owner will be considered the purchaser, and the descent shall be traced accordingly.

Brothers and sisters now trace their descent from each other, and not through their parent: the present bill proposes to alter this rule; and to direct that the descent to every brother and sister shall be traced through a parent.

At present, as is well known to our readers, a father, or other lineal ancestor, cannot, as such, inherit lands of his children. This rule, which has long been

considered without good reason, it is proposed to alter, and to enact that lineal ancestors may be the heirs of their lineal descendants, and that they shall come in in preference to collateral persons claiming through them, that is, their own children, &c.

The present bill also proposes to settle the doubt which now exists when there is a failure of male paternal ancestor of the person from whom the descent is traced and their descendants, whether the mother of his more remote male paternal ancestor or her descendants, or the mother of a less remote male paternal ancestor or her descendants, shall come in before the other, and to enact that the former shall be preferred. This is in conformity with the opinion of Mr. Justice Blackstone, given at length in the Commentaries.

Another important alteration proposed by the present measure is to let in the half blood, who are now for ever excluded from inheriting. If the land be derived from a male ancestor, the heirs of the half blood are to inherit after the whole blood of the same degree: if from a female ancestor, then they are to come in after her.

The bill then proposes to enact, that after the death of an alien who has not been passed by in the descent, his descendants may inherit. A title, by the existing law, may be made through an alien. (See 1 W. 3. c. 6.)

By the present law, if a person is attainted, the descent of lands cannot be traced through him; for the lands will rather escheat. It is proposed to alter this rule, and to enact that after the death of a person attainted his descendants may inherit.

The act, if passed, is not to come into operation until the 1st of January, 1834; and limitations made before the 1st of January, 1834, to the heirs of a person then living, shall take effect as if this act had not been made.

The new rules as to descent, are intended to apply to copyholds and customary lands, and lands held by the tenure of gavelkind and borough english. (See 1 R. P. Report, and 2 M. R. p. 366.) These, therefore, are not excepted from the act.

These are the principal alterations which are proposed by the present bill.

^a See an Analysis of the Bill, 2 L. O. 300.

THE COMMON LAW AMENDMENT BILL, AND THE COMMISSIONERS' REPORTS.

VARIANCES.—PLEADINGS.

WE were obliged, in Number 131, to defer the Extracts from the Second Report of the Common Law Commissioners, relating to *Variances*. The 25th section of the New Bill, which extends the provisions of the 9 Geo. 4, c. 15, to *all* variances, comes strongly recommended by the Commissioners. The passages we purpose extracting relate also in a considerable degree to the 1st section—one of the most important in the Bill, relating to *Pleadings* in general, and which, by that section, are proposed to be regulated by rules and orders to be from time to time made by eight or more of the Judges, including the three Chiefs.

There are some introductory remarks at pp. 35—37 of the Report; but the following will be sufficient for our present purpose:

“We understand by a *variance* between the allegations and the proof, a discrepancy between them in some particular or particulars only: where the disagreement extends to the whole sense and tenor of the allegation, we consider it not as a case of variance, but of mere failure in proof, which ought of course in every case to be fatal. Thus if the plaintiff declares on a warranty that a horse is sound, and the proof be a warranty that he is under six years of age, this being a warranty of a totally different character, wholly fails to support the declaration, and there is no variance, in the proper meaning of that term. But if the proof be a warranty that the horse is sound, except for a kick on one of its legs, this being a difference only in regard to a particular exception, is a variance^a. Variances so defined, may be considered as consisting of several classes. *First*, such discrepancies between the allegation and the proof, as may have misled the opposite party into the supposition, that a different transaction or occasion was intended from that really in view; as where the plaintiff declares on a contract between him and the defendant, to deliver a certain quantity of timber on the arrival of a ship called the *Juno*, and the proof is a contract between them, for such delivery on arrival of a ship called the *Thetis*; and there having been in fact another contract between the plaintiff and *J. S.*, on the one part, and the defendant on the other, for delivery of timber on the arrival of the *Juno*, the defendant has been misled by the misstatement of the name of the vessel, to suppose that the latter contract was the subject of the action. *Secondly*, such discrepancies as are in themselves sufficient to destroy the right of action

or defence; as where the plaintiff declares upon these defamatory words, “you are a perjured villain,” and the words proved are, “you are a false villain;” or where to an action of trespass with carts and carriages, the defendant pleads a right of way with carts and carriages, and upon the proof establishes a right of way on foot only. *Thirdly*, such discrepancies as, though not in themselves sufficient to destroy the right of action or defence, become so by the aid of some collateral matter not alleged in the pleadings; as where the plaintiff declares on a promise, that the defendant would sell and deliver him a certain quantity of timber within fourteen days, alleging that the fourteen days have expired, but the timber is not delivered; and upon traverse of the contract, it appears to have been a promise to deliver within fourteen days, or as soon as a ship called the *Juno* should arrive in the port of London. In this case, the variance is not in itself an answer to the action, because if the ship had arrived before the commencement of the suit, the plaintiff is equally entitled to his action; and whether she had arrived or not, does not, upon the mere disclosure of the variance, appear. But if the fact be that the ship had not then arrived, the variance, with the aid of this fact, amounts to a full answer to the action. *Fourthly*, such discrepancies as fall within none of the preceding classes; as where the plaintiff, in an action for malicious prosecution, declares that he was carried on a warrant before Baron Waterpark of *Watersfork*, and the proof is that he was carried before Baron Waterpark of *Waterpark*^b; or where he declares on these defamatory words, “*This is my umbrella and he stole it*,” and the words proved are, “*It is my umbrella and he stole it*”^c.”

“When a variance of the *first* class occurs, it ought of course to be allowed as a ground of objection: but it ought not, we think, to be fatal, because it affects in no degree the right to maintain the action or defence^d. Instead therefore of a nonsuit or verdict passing against the party (as it would at present), we propose that in such cases the Judge should order the record to be withdrawn and amended. We think that the record must be withdrawn, and that it is not possible in such cases to amend the record instantaneously and proceed with the trial, because the pleading of the party who has been misled, would in almost all cases assume a different form, and a totally different issue would arise for trial, on which neither party would be prepared. The costs attendant upon this proceeding, including those of the first trial, ought in general to be paid by the party on whose allegation the variance arises, to his adversary; but as it is possible that in some instances the mistake might arise without negligence, we think it desirable to leave the matter of costs in the discretion of the presiding Judge. We propose too, that it should be left to the same

^a *Jones v. Cowley*, 4 B. & C. 445.

^b *Walters v. Muce*, 2 Barn. & Ald. 756.

^c *Ibid.*

^d See the Suggestions of Mr. Denman, in the Appendix to the First Report.

authority, to determine whether the opposite party has been in fact misled by the variance; as this would be a frequent pretence, of the truth of which no direct proof could conveniently be required, but on the probability of which the Judge would in general have no difficulty in forming his opinion; and we think that the objection ought not to be allowed to prevail, unless the Judge is satisfied, not merely that the party who takes it has been misled, but that he has been misled to his prejudice in maintaining his action or defence upon the merits; and that in order to ascertain this, the Judge should be at liberty to receive affidavits, if necessary. In the mean time the trial may be suspended, and another cause taken.

“Where a variance of the *second* class occurs, it ought of course to be fatal. Indeed the objection is, in such cases, not founded so properly on the variance, as on the apparent merits of the cause. We propose therefore, that in such cases a nonsuit or verdict should pass (as by the present practice) against the party on whose allegation the variance arises.

“Upon a variance of the *third* class, we think that no objection ought to be allowed at the trial. In the nature of things such a variance may either affect the merits of the cause, or be wholly immaterial to them; in the latter case it ought to be disregarded. But whether it falls under the former or the latter predicament, cannot be determined at the trial, unless by going into proof of circumstances not stated on the record, and foreign to the issue which the parties came prepared to try. Thus in the example already given, of a promise declared upon to deliver timber within fourteen days, and a promise proved to deliver within fourteen days, or as soon as a ship called the *Juno* should arrive in the port of London, the variance ought to be no objection unless in fact the ship had not arrived in London at the time when the suit was commenced; for if she had, the contract was broken by nondelivery of the timber, and a right of action had accrued. But whether she had or not, is a matter wholly collateral to the issue, which is supposed to be taken on the contract only. It is true that upon the general issue in *assumpsit*, this question might be discussed without deviating from the issue; but even then, not without surprise on the plaintiff, and consequent injustice. Besides the recommendations contained in a subsequent part of this Report will, if adopted, put the general issue out of use in that action; and even, according to the present practice, a variance of the third class may frequently arise, whatever be the form of action, upon a special issue. While these considerations have led us to the conclusion that a variance of this class ought not to be allowed as an objection at the trial, they equally tend to the inference, that in some other mode, and in some other stage of the cause, it should be competent to the adversary to shew and rely upon the variance; for otherwise it is obvious that he might be excluded from a fair defence. We propose then, that he should be allowed to *plead* the variance, inserting in such plea the

allegation of that matter which shews the variance to be material. Thus in the example supposed, the defendant might plead that he made no such promise as alleged, except as hereinafter mentioned, *viz.* that he would sell and deliver the said timber within fourteen days, or as soon as a certain ship called the *Juno* should arrive in the port of London; and aver that in fact the said ship had not arrived in the port of London at the commencement of the suit. In answer to such plea upon variance, the plaintiff is to be at liberty either to demur to the same as an insufficient answer to the action, or take issue thereon by maintaining his original allegation, or plead over, by tendering issue on any matter alleged in connection with the variance. Thus in the example: supposing the plaintiff to be satisfied that this plea upon variance, if true, is a good answer to the action, he may either reply maintaining his own allegation, *viz.* that the defendant did make such promise as alleged in the declaration (which is in effect denying the variance); and this replication will admit that the ship had not arrived in the port of London: or the plaintiff may reply that the ship had arrived in the port of London at the commencement of the suit; and this replication will admit the variance alleged in the plea. Where the plaintiff replies maintaining his own allegation, the burthen of proof will lie (as it ought to do) upon him; and if upon the trial, the matter proved is conformable to the allegation in the plea upon variance, or sufficiently covered or answered by the same, then a verdict or nonsuit is to pass against the plaintiff; otherwise it will be sufficient for the plaintiff to prove his own allegation to any extent sufficient to maintain his action; and on so doing (though a new variance should appear not corresponding with the allegation of either party), he will be entitled to a verdict. Thus in the example: if the plaintiff reply, maintaining his own allegation, and the contract proved is for delivery in fourteen days, or as soon as the *Juno* should arrive in the port of London, as alleged in the plea, the defendant will have a verdict, or the plaintiff will be nonsuited; and if the contract is proved to have been for delivery in fourteen days, or in one *week* after the arrival of the ship in the port of London, the consequence will be the same; for the contract as proved, is sufficiently covered or answered by the plea, which alleges that the ship has not arrived. On the other hand, if the contract proved be for delivery of the timber in fourteen days, as alleged in the declaration, the plaintiff will have a verdict; and the same consequence will follow, though it should be for delivery of the timber in twelve days; for this variance does not apparently remove the plaintiff from his right of action. The preceding example supposes the variance to arise upon the declaration, and the variance consequently to form the subject of *plea*. But if the variance should arise on the plea, it will then be the subject of a *replication* upon variance, the proceeding on which will be precisely of the same kind, and conducted on the same principles. So there

may be a *rejoinder*, &c. upon variance; but such cases will of course be of rare occurrence. To prevent confusion and repugnancy, only a single plea, replication, or subsequent pleading upon variance, is to be allowed; nor is it to be pleaded in conjunction with any other pleading whatever. The forms of a plea and replication upon variance are given at length among the regulations subjoined to this Report. The plan of pleading upon variance primarily applies (as already explained) to a variance of the third class; but we propose that it should be applicable to those of the second also. Thus in the example above given: where the plaintiff declares on these words "you are a perjured villain," the defendant may plead upon variance that he spoke no such words as alleged in the declaration, except as hereinafter mentioned, *viz.* "you are a false villain;" and in such cases of course the plea will not require the aid of any additional allegation to shew the materiality of the variance. The advantage of allowing the plea in these cases, is, that it will give the other party the opportunity of taking the opinion of the Court as to the materiality of the variance, by demurring to the plea; and consequently prevent, in many cases, the necessity of going down to trial. Thus in the example: the plaintiff might demur if he had no reason to contest the variance, but thought the words "false villain," actionable; and a trial would be saved. There is this difference, however, between a variance of the third class and a variance of the second, that the former, if not pleaded, becomes immaterial; but when the latter occurs, the adverse party will have the option of either shewing it upon plea, or of traversing the incorrect allegation, and relying on the variance as a fatal objection at the trial. We have endeavoured so to arrange this plan of pleading upon variance, as to disturb in the smallest degree possible the present principles of pleading. It no doubt gives, in addition to the present alternatives of confession and avoidance, or of denial, a third mode of answer, *viz.* that of qualified denial; but this is quite consistent with logical precision, and seems indeed to supply an existing defect in the dialectical method of the system. *Negandi duplicem ostendimus formam* (say the ancient rhetoricians) *aut non esse factum, aut non hoc esse quod factum sit**. We have also attended to the necessity of so constructing the pleas, &c. upon variance, as not to throw the affirmative proposition, and consequently the burthen of proof, upon the party who pleads them. They are therefore worded *negatively*; and the affirmative of the issue remains fixed, as in justice it ought to be, upon the party making the original allegation. It may be objected, perhaps, that such pleas may sometimes be adopted for vexatious or dilatory purposes. But we shall have occasion hereafter to suggest certain regulations with respect to sham pleading, which we hope will effectually extinguish that practice, and render its application to the case of pleas, &c. upon variance impossible. It

may be proper to remark in this place, that we think the proposed plan of pleading upon variance will, in some cases, probably operate by way of inducing the parties to amend the proceedings, so as to agree on all points but the one really in dispute; and we propose that such amendments should be allowed as of course, and that the costs of them should be costs in the cause. And further, that if an amendment be made by either party adopting the allegation contained in the plea, replication, &c. upon variance, it shall not be competent to the opposite party again to plead upon variance, nor to deny the allegation so adopted.

"It remains now to notice such discrepancies between the allegation and the proof as we have placed in the *fourth* class of variances. These are easily provided for. There seems to be no reason why they should be allowed as grounds of objection, or why they should not be regarded as wholly immaterial. We propose, therefore, that they should be so regarded. We think that a variance, either of this or the preceding class, should be passed by at the trial without even requiring an amendment. But as it may be sometimes convenient, with a view to future proceedings, that the mistake should not remain on the record uncorrected, we have thought it desirable to provide, that on application of either party, or of his own accord, the Judge may direct the jury to find the fact according to the evidence, and may direct such special finding to be indorsed upon the record; or (where found more convenient) may direct an amendment *instanter*, and without payment of costs."

[To be concluded in the next Number.]

SUPERIOR COURTS.

Exchequer.

UNDERTAKING.—ATTORNEY AND CLIENT.

The terms of a written undertaking cannot be varied by parol, unless there is fraud.

The defendant had been arrested by the plaintiff for 400*l.*, and the defendant's attorneys gave a written undertaking that, in the event of the plaintiff's discharging the defendant out of custody, if the money was not paid within a certain time, they would put in bail for the defendant, or render him. The money not having been paid, *Manning* had obtained a rule calling upon the attorneys to shew cause why they should not pay the money in pursuance of their undertaking, or put in good bail.

Chilton shewed cause. He produced an affidavit of the attorneys, that the undertaking was given on the express understanding that they were not to be liable to pay the money until they had received the money. In an action against other persons, in which one of the attorneys was the plaintiff, he contended, that though he might not be able to avail himself of such a stipulation if an action were brought, yet, upon an application like this, the Court

* Quintil. Lib. V. ch. 13.

would not interfere till they had received the money on the faith of which they agreed to become security.

The *Court*.—You cannot vary by parol the terms of a written contract: all the mischief of admitting parol evidence applies equally to this case as to any other. There is no case where you can vary the terms, unless written fraudulently.

Bail to be put in, and rule enlarged for a week.—*Hill v. Warner*, H. T. 1833. Excheq.

ENTERING APPEARANCE FOR DEFENDANT.

The plaintiff may enter an appearance for the defendant at any time within twelve months, and is not limited to the term after the return of the writ of quo minus.

On the 2d of May, a *quo minus* was served on the defendant, returnable on the 3d. Four days time to pay debt and costs was indorsed. On the 2d of November, an appearance was entered for the defendant by the plaintiff. The declaration was filed on the 20th, and a rule to plead in eight days was served on the 22d. On the 5th of December, a notice to tax costs on the 7th was given, and execution issued on the 11th. On the 15th, defendant gave notice to the plaintiff that his proceedings were irregular, and that a summons was taken out for setting them aside, which was attended before Mr. Baron Bolland on the 17th, who referred them to the Court. *J. Jervis* having obtained a rule for setting aside proceedings for irregularity—

Watson now shewed cause. The objection is, that the appearance was too late; that the plaintiff had only the vacation after the second term to enter an appearance; but the defendant is now too late to state that objection. The plaintiff declared on the 20th: it does not appear when notice of declaration was given; but the rule to plead was given on the 22d. The term ended on the 26th, and therefore the defendant had time to apply to the Court within the term, to set aside the appearance; he was not justified in lying by till execution executed. But there is another answer—the practice of the King's Bench and Common Pleas, that the appearance must be within two terms, or in the vacation after, does not prevail in this Court: it may be entered at any time within the twelve months.

The Court here inquired of the officers; and two of them certified that such was the practice in the Exchequer.

J. Jervis, in support of the rule, contended, that the practice in this Court was directly contrary to that of the King's Bench and Common Pleas; and cited Price's Exchequer Practice^a, where it is said, such an appearance may be entered by the plaintiff at any time before the end of the term after that in which the writ is returnable (and others of that term), but not afterwards; and he referred to *Smith v. Paynter*^b, and other cases, to shew that the Court has interfered, even though a longer time has

elapsed than in the present instance. At all events, he argued, that the Court would not give costs where there was a doubt about the practice.

The *Court*.—There is no doubt among the officers. You might have inquired of them, in the first instance, and they would have informed you the proceedings were regular. Unless a *non pros.* is signed, the plaintiff is not out of Court till the end of the year; and the delay in your application is not accounted for.

Rule discharged, with costs.—*Cooke v. Allen*, H. T. 1833. Excheq.

SITTINGS IN CHANCERY.

Easter Term.

BEFORE THE LORD CHANCELLOR.

At Westminster.

Monday	-	April 15	|	Motions.
Tuesday	-	16	|	Petitions.
Wednesday	-	17	}	Re-hearings and Appeals.
Thursday	-	18		
Friday	-	19		
Saturday	-	20		
Monday	-	22		
Tuesday	-	23	}	Motions.
Wednesday	-	24		
Thursday	-	25	|	Motions.
Friday	-	26	}	Re-hearings and Appeals.
Saturday	-	27		
Monday	-	29		
Tuesday	-	30		
Wednesday	-	May 1		
Thursday	-	2	|	Motions.
Friday	-	3	}	Re-hearings and Appeals.
Saturday	-	4		
Monday	-	6		
Tuesday	-	7	|	Motions.
Wednesday	-	8	|	Motions.

BEFORE THE VICE CHANCELLOR.

At Westminster.

Monday,	April 15	|	Motions.	
Tuesday	-	16	|	Petitions.
Wednesday	-	17	}	Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Thursday	-	18		
Friday	-	19		
Saturday	-	20		
Monday	-	22		
Tuesday	-	23	}	Motions.
Wednesday	-	24		
Thursday	-	25	|	Motions.
Friday	-	26	}	Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Saturday	-	27		
Monday	-	29		
Tuesday	-	30		
Wednesday	May 1			

Thursday	-	May 2	|	Motions.
Friday	-	-	3	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Saturday	-	-	4	
Monday	-	-	6	
Tuesday	-	-	7	| Short Causes and Do.
Wednesday	-	-	8	| Motions.

KING'S BENCH SITTINGS.

IN TERM.

<i>Middlesex.</i>		<i>London.</i>	
Saturday,	April 20	|	Tuesday - May 7
Wednesday	- 24		
Monday	- 29		
Monday	- May 6		

AFTER TERM.

Thursday,	May 9		Friday,	May 10
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The Court will sit at eleven o'clock on the 20th, 24th, and 29th of April, and 6th of May; at twelve o'clock on the 7th, and at half-past nine on the other days.

If any of the causes appointed for the 20th, 24th, and 29th of April, remain untried on those days, they will be tried on the 22d, 23d, 25th, 26th, and 30th of April, and 1st May.

COMMON PLEAS.

IN TERM.

<i>Middlesex.</i>		<i>London.</i>	
Wednesday,	April 24	Friday	April 26
Wednesday	May 1	Friday	May 3

AFTER TERM.

Thursday	May 9		Friday	May 10
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The Court will sit at eleven o'clock in the forenoon on each of the days in term; and at half-past nine precisely on each of the days after term.

SITTINGS IN THE EXCHEQUER.

Monday	-	April 15	|	
Tuesday	-	- 16	|	
Wednesday	-	- 17	|	Equity.
Thursday	-	- 18	|	
Friday	-	- 19	|	Equity.
Saturday	-	- 20	|	Equity.
Monday	-	- 22	}	Error.—Special Pa- per.—London N. P.
Tuesday	-	- 23		Error.—London N. P.
Wednesday	-	- 24	}	Special Paper.—Mid- dlesex N. P.
Thursday	-	- 25		Equity.
Friday	-	- 26	|	Equity.
Saturday	-	- 27	|	Equity.
Monday	-	- 29	}	Special Paper.—Mid- dlesex N. P.
Tuesday	-	- 30		Equity.
Wednesday	-	May 1	|	Special Paper.
Thursday	-	- 2	|	Equity.
Friday	-	- 3	|	London N. P.
Saturday	-	- 4	|	Equity.
Monday	-	- 6	}	Special Paper.—Mid- dlesex N. P.
Tuesday	-	- 7		Equity.
Wednesday	-	- 8	|	

EXCHEQUER OF PLEAS.

IN TERM.

<i>Middlesex.</i>	<i>London.</i>
First Sittings.	First Sittings.
Wednesday April 24	Monday, April 22
Second Sittings.	Second Sittings.
Wednesday May 1	Friday May 3
The Court will sit, by adjournment, in Middlesex, on Monday 29th of April, and Monday, 6th of May.	The Court will sit, by adjournment, in London, on Tuesday, 23d of April.

AFTER TERM.

<i>Middlesex.</i>		<i>London.</i>	
Thursday,	May 9	|	Friday, May 10.
The Court will sit at ten o'clock.			

NOTES OF THE WEEK.

[Specific days were fixed before the Easter Recess for several of the stages of the following legislative measures; but the adjournment has occasioned various changes, which we shall from time to time notice.]

House of Lords.

BILLS WAITING FOR SECOND READING.:

Common Law Courts.
Local Jurisdictions.
Privy Council Appellate Jurisdiction.
Court of Chancery Regulation.

House of Commons.

NOTICES OF MOTIONS.

To establish a General Registry for all Deeds and Instruments relating to Real Property in England and Wales. *Mr. William Brougham.*

To authorize the Transfer of Entailed Estates, with a view to facilitate the Payment of Debts left by Testators. *Sir John Hammer.*

For adjourning the Assizes from Lancaster to Liverpool and Manchester. *Mr. Ewart.*

Touching Imprisonment for Debt, and the Law of Debtor and Creditor. *The Solicitor General.*

For better defining the Law in Cases of Housebreaking and Burglary, and for Abolishing Capital Punishments in cases of Returning from Transportation, and of Letter Stealing. *Mr. Ewart.*

For allowing the Affirmation of Quakers to be taken instead of an Oath in all cases. Lord Morpeth.

To Amend the Reform Act as to Compulsory Payment on Registration of Votes—for better defining the Computation of Distance of Residence—preserving Franchise in certain cases of Change of Residence—and enabling Electors to declare themselves Neutral. Mr. Tooke.

To consider Disputed Points of Law of Elections. Mr. C. Buller.

To prevent the Duration of Parliaments longer than Three Years. Mr. Wilks.

To regulate the Office of Sheriff, reduce the Expenses, and facilitate the Passing of Accounts. Mr. Fyshe Palmer.

To amend so much of 7 & 8 G. 4. c. 30. § 40, as enables a Prosecutor to put in Evidence a previous Conviction for Felony before Verdict. Mr. Parker.

To enable Justices in Petty Session to empanel a Jury and try Persons under a certain Age accused of certain Small Offences. Mr. Parker.

To repeal so much of 7 & 8 G. 4. c. 29. § 12, as inflicts the Punishment of Death for Housebreaking, any person therein being put in fear. Mr. Lennard.

To alter and amend 7 & 8 G. 4. c. 28, as to Proceedings against Offenders previously convicted; and 7 & 8 G. 4. c. 29, against Persons under Seventeen for Simple Larceny. Sir Eardly Wilmot.

BILLS WAITING FOR SECOND READING.

Prisoners' Counsel.
Law of Libel.
Dramatic Performances.
Suffolk Assizes.
Glamorgan Assizes.
Letters Patent.
Sewers.
Payment of Debts.
Game.
Police Offices.

BILLS IN COMMITTEE.

Dramatic Authors.
Lunatic Commissions.
Justices of the Peace.
Highways.
Fines and Recoveries.
Inheritance.
Limitation of Real Actions.
Dower.
Curtesy.

BILL WAITING FOR THIRD READING.

Indemnity (Articled Clerks, &c.).

ANSWERS TO QUERIES.

Law of Property and Conveyancing.

BEQUEST.—ANNUITY. P. 387.

If a personal annuity be limited to one generally, he shall be entitled to receive it for his life only; if, on the other hand, it be limited to him *during the life of another*, it shall not cease, but devolve to his personal representatives. See *Savery v. Dyer*, 1 Dick. 162. S. C. Amb. 139; cited 1 Byth. Prec. 593. I would also refer T. S. to the case of *Bearpark v. Hutchinson*, 7 Bing. 178, in which the Court of Common Pleas decided, that if the grantee of a rent charge *pur autre vie* dies, living *cestui que vie*, the rent goes, by virtue of the Statute of Frauds, to his executor, though not named in the grant. There appears to me no ground on which the widow can refuse payment of the annuity to her daughter's representatives.

MANCUNIENSIS.

BEQUEST.—INTEREST ON LEGACY. P. 131.

In *Sitwell v. Bernard*, Lord Eldon says, "As to the general point, I have taken it to be clearly settled, that where no rate of interest is given by the will, the Court gives four per cent." See his judgment, 6 Vesey, 543.

MANCUNIENSIS.

Practice.

NEW RULES. P. 419.

1. The *four day rule* is not inoperative. The Uniformity of Process Act, in fixing the time within which the defendant is to enter an appearance, takes no more notice of this than acts of parliament have done of many other Rules of Court, which the Judges have from time to time deemed it necessary to make for the convenience and protection of parties. By this rule the defendant is informed, that upon payment, *within four days*, of the amount indorsed on the writ, no further proceedings will be taken against him. This warning is solely intended to protect the defendant from any expenses into which a vindictive, harassing plaintiff, might be disposed to involve him; and provides him with ample time to meet the demand made against him, if a fair one. Then how is it to be supposed that he can be entitled to *eight days to settle*, when he is either unwilling, or neglects to avail himself of the *four days* favor shewn him? If he elects to defend an action, the Uniformity Act has pointed out to him his *next* step, which is to enter an appearance *within eight days*.

As to the costs of declaration, &c. an attorney would be as clearly entitled to them after the expiration of *the four days*, as he would be for entering an appearance; see stat. (the default or negligence of the defendant entitling him to them in both instances); but for a Rule of T. T. 1 W. 4., still in existence, which says that "no declaration *de bene esse* shall be delivered till *six* days after the arrest or service of process." So that if the defend-

ant neglect to settle within the *four days*, the attorney may claim the costs of affidavit of service on the *fifth*, deliver his declaration on the *seventh* day (inclusive of the day of service), and be of course entitled to costs of declaration before the expiration of the *eight days*.

W. W. B.

2. I think that the Uniformity of Process Act has rendered the Rule of H. T. 2 W. 4. (as to the time of settling the action) inoperative. The rule and the act are at variance with each other, and inconsistent. The defendant, under the act, has *eight days after the service of the writ (or arrest) to settle the action*; and under the rule, he is warned to pay the debt and costs in *four days*: but as the act was passed subsequent to the promulgating of the rule, the former must, of course, prevail; added to which, if an attorney were allowed to make any further charge beyond the costs of the writ, *before* the eight days mentioned in the writ were expired, although *after* the four days named on the back of the writ, under the rule, had expired, the very object of the act would be defeated. The mention of the four days on the back of the writ might now be discontinued, as the writ itself, for that purpose, is now quite sufficient. I presume that the practice is merely continued because the rule is not repealed.

J. S.

Law of Landlord and Tenant.

NOTICE TO QUIT. P. 355.

In answer to "A Student," I believe it is a point well settled, that where premises are let from year to year, upon an agreement that the tenancy may be determined by a quarter's notice, the notice to quit must expire at such time as the tenancy commenced. The most recent cases are *Kemp v. Derrett*, 3 Camp. 510; *Brown v. Burtinshaw*, 7 Dow. & Ry. 603.

MANCUNIENSIS.

QUERIES.

Law of Property and Conveyancing.

VALUATIONS.

Is there any book in which rules and regulations are laid down, as to the manner in which the respective valuations of freehold and leasehold property, annuities, fee-farm rents, reversionary interests, &c. &c. are determined on?

A STUDENT.

SETTLEMENT.—VALIDITY.

M. B., without the knowledge of her father, *A. B.*, privately marries *C. D.*: she afterwards obtains his consent, and the ceremony is performed again, the father not being aware the marriage had once taken place. After the first, but before the second marriage, a deed of settlement is executed by *M. B.*, *A. B.*, her father, and *C. D.*, her husband, of property belonging to her, she signing her maiden name. Is such settlement, in favor of children of the marriage, valid, as against a

subsequent mortgagee, by *C. D.* and wife, without notice?

R. M.

LEGACY.—NOTES.

A. bequeathed his property of every sort, in and about his dwelling house, to *B.*: Will *bank notes, promissory notes, &c.* found in the house, pass to *B.*?

A STUDENT.

Common Law.

STATUTE OF LIMITATIONS.—NOTE.

A promissory note payable on demand, the amount not demanded until after six years from the date of the note: Is the holder precluded from recovering by the Statute of Limitations?

C. M. W.

THE EDITOR'S LETTER BOX.

. We have been repeatedly urged by our Country Subscribers, to stamp a part of our impression for their benefit, and thus enable them to receive our publication by the post, immediately. We might do this, by increasing the charge of that portion of our impression to 10d.; and we will do so, if our country friends will inform our publisher whether they would prefer it; but it is obvious that a sufficient number must agree to it, to enable us to meet the additional risk and expense.

We feel much obliged by the advice of "AMICUS," because we believe it to be well meant. We assure him, that the articles he mentions have been inserted at the express request of different classes of subscribers. The present plan of our work has given almost universal satisfaction; and if our friend will but reflect on the nature and extent of our labours, he will see, that were our motives of the nature he supposes, we could have little hope of gratifying them. The welfare and advantage of our own profession, whatever he may think, are our chief consideration.

We will give directions for adopting the suggestion of A. H. M.

Many articles are again unavoidably postponed on account of the extent of the parliamentary matter, for which we are pressed by our subscribers in general.

We believe that the subject of the Stamp Duties imposed on the profession, has not been neglected by the Incorporated Law Society; and that a proposal will be made beneficial to the practitioners, without materially diminishing the revenue.

Mr. Strickland's pamphlet, inviting the attention of all ranks of the people to the Real Property Bills, arrived too late to afford it a sufficient notice this week. It is published by Ridgway, and we recommend it to the perusal of our readers.

The important publication of the Poor Law Commissioners has been received, as well as several books to be reviewed.

Our Fifth Volume will be closed on the 27th instant, with a Title Page, Table of Contents, and Index.

The Legal Observer.

Vol. V.

SATURDAY, APRIL 20, 1833.

No. CXXXVI.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE SOLICITOR GENERAL'S BILLS.

No. III.

THE FINE AND RECOVERY BILL.

THE abolition of Fines and Recoveries has long been recommended. A sufficient reason for this would seem to exist, in the circumstance that they are a mass of absurd fiction, resorted to in a former age, to accomplish indirectly that which may now be done openly and directly; but when it is remembered that these very fictions give rise to the most delicate and difficult questions, we think that but few can dissent from the alteration in this part of our present system. At the same time we must admit, that in effecting an alteration in matters so intertwined with all the other parts of our law, the greatest care and attention are necessary. We are happy, therefore, to hear that this bill has undergone a very rigid scrutiny before the Select Committee appointed for the consideration of the Solicitor General's bills. We shall now give some account of the objects of the bill.

The *first* enactments define the meaning of certain words in the act.

The *second* set of enactments contains provisions respecting—I. The abolition of fines and recoveries. II. The saving of the amendment of them, and the rendering of them valid in certain cases. III. The custody of them. IV. The tenure of ancient demesne. V. The abolition of warranty.

I. 2. No fine or recovery shall be levied or suffered after the 31st of December, 1833, ex-

NO. CXXXVI.

cept where a writ of *dedimus*, or other writ, shall have been previously sued out.

II. 3. Fines having errors or mistakes in the parcels or parties apparent from the deeds declaring the uses, shall not require amendment.

4. Recoveries having errors or mistakes in the parcels or parties apparent from the deeds making the tenants to the writs of entry, shall not require amendment.

5. No recovery shall be invalid in consequence of the neglect to enrol the bargain and sale, purporting to make the tenant to the writ of entry, provided the same would have been valid if the bargain and sale had been enrolled.

6. Recoveries invalid in consequence of there not being proper tenants to the writs of entry, made valid in case the persons having the beneficial estates shall have made the tenants to the writs in due time.

8. The jurisdiction of Courts to amend fines and recoveries in cases not provided for by this act, not taken away.

III. 9. The records and proceedings of fines and recoveries in the Courts of Common Pleas at Westminster and Lancaster and in the Court of Pleas at Durham, shall be kept as the respective Courts and Justices shall direct, and searches may be made and extracts and copies obtained as heretofore while in the custody of the present persons, and when kept by other persons, then as shall be ordered by the Court or Justices having control over the same.

IV. 10. Fines and recoveries of lands in ancient demesne levied or suffered in the manor court rendered valid where other fines and recoveries have been previously levied or suffered in a superior Court, and also when levied or suffered in a Court of competent jurisdiction.

V. 11. Estates tail and estates expectant thereon no longer barrable by warranty.

Third set of enactments.—New provisions

2 K

respecting estates tail, and base fees, and estates expectant thereon. I. The barring of estates tail and estates expectant thereon, and the enlarging of base fees. II. Definition of the Protector. III. Powers of the Protector. IV. Confirmation of voidable estates created by tenants in tail. V. Enlargement of base fees, when no intermediate estates between them and the reversions. VI. Modes by which estates tail and estates expectant thereon are to be barred, and by which base fees are to be enlarged, and by which the consent of the Protector is to be given. VII. Copyholds. VIII. Bankrupts. IX. Money to be laid out in lands to be entailed. X. Office copies of the enrolment of deeds evidence.

I. 12. After the 31st of December, 1833, every actual tenant in tail in possession, remainder, contingency, or otherwise, shall have full power to dispose of the lands entailed in fee simple absolute or for any less estate, saving the rights of certain persons.

13. The power of disposition shall not be exercised by women tenants in tail *ex provisione viri*, under 11 H. 7. c. 20, except with such assent as required by that act.

14. Except as to lands in settlements made before the passing of this act, the 11 Hen. 7. c. 20. repealed.

15. The power of disposition shall not extend to tenants in tail restrained by the 34 & 35 Hen. 8. c. 20, or by any other act; nor to tenants in tail after possibility of issue extinct.

16. Every person who would have been actual tenant in tail of lands if his estate tail had not been converted into a base fee, shall have full power to dispose of the lands so as to enlarge the base fee into a fee simple absolute, saving the rights of certain persons.

17. Act shall not extend to enable issue inheritable to estates tail to bar their expectancies.

18. A disposition by a tenant in tail for any limited purpose, shall, to the extent of the estate thereby created, be a bar in equity as well as at law; but if for an estate *pour autre vie*, or for years, the disposition shall in equity be a bar only so far as to give effect to the limited purpose.

II. 19. Where there shall be under a settlement an estate for years determinable on life, or any greater estate prior to an estate tail under the same settlement, the owner of such prior estate shall be the Protector of the settlement as to the lands in which such estate shall subsist, though the same may have been charged or disposed of; and an estate, by the curtesy in respect of the estate tail or any prior estate created by the same settlement, shall be a prior estate; and an estate by way of resulting use or trust for the settlor, and a right to the surplus rents, shall be an estate within the meaning of this clause.

20. Each of two or more owners of a prior estate shall be the sole Protector, to the extent of his undivided share.

21. Where the prior estate of a married woman shall not be settled to her separate use, she and her husband together shall be the Pro-

jector; and where settled to her separate use, she alone shall be the Protector.

22. Where, in case of the disposition of a life estate on or before the 31st of December, 1833, the person to make the tenant to the writ of entry in a recovery, shall be the Protector.

23. Where in the case of the disposition of a reversion in fee, or any estate thereout, on or before the 31st of December, 1833, the person to make the tenant to the writ of entry in a recovery, shall be the Protector.

24. A bare trustee shall be the Protector where, under a settlement made on or before the 31st of December, 1833, he shall be the person to make the tenant to the writ of entry in a recovery.

25. A settlor entailing lands may, by the settlement, appoint any person or persons Protectors, and may, by a power in the settlement, perpetuate the protectorship; and the person who, if this clause had not been inserted, would have been the Protector, may be one of the persons to be appointed Protector.

26. An estate limited by a settlement by way of confirmation or restoration of a previous estate shall, so far as regards the Protector, be an estate under such settlement.

27. The owner of a lease at a rent created or confirmed by a settlement, shall not be the Protector.

28. No woman in respect of her dower, and (except in the case of a bare trustee) no heir, executor, administrator, or assign, as such, shall be the Protector.

29. Where the owner of the prior estate shall by the two last clauses not be the Protector, the person who, if such estate did not exist, would be the Protector, shall be the Protector.

30. Power to the Lord Chancellor, &c. on petition of a tenant in tail desirous of making a disposition, where the Protector shall be lunatic, whether found such by inquisition or not, or for the Court of Chancery, where the Protector shall be convicted of treason or felony, or having no beneficial interest shall be an infant or abroad, or cannot be found, to appoint a Protector to consent to the disposition. If, where husband and wife are Protector, either shall be lunatic, but not found such by inquisition, or shall be convicted of treason or felony, then power to the Lord Chancellor, &c. to appoint a Protector jointly with the other, to consent to the disposition, or to direct the husband or wife, who shall not be lunatic, to be the sole Protector.

31. Where husband and wife are protector, and either shall be lunatic, and found such by inquisition, then the other shall, during their joint lives, or until the commission be superseded, be the sole Protector.

32. The consent of the Protector appointed by the Lord Chancellor, &c. in cases of lunacy, &c. shall be as valid as if he were the original Protector.

III. 33. Where there is a Protector, his consent shall be requisite to enable an actual tenant in tail, who is not entitled to the immediate re-

~~version in fee, to make~~ an absolute disposition under this act. Without such consent, an actual tenant in tail may create only a base fee.

34. Where there is a base fee and a Protector, his consent shall be requisite to enable the person who would have been tenant of the estate tail if not barred, to exercise his power of disposition.

35. The Protector shall be subject to no control in the exercise of his power of consenting, except in the case of a person appointed by the Lord Chancellor, &c. in cases of lunacy, &c.

IV. 36. A voidable estate by a tenant in tail in favour of a purchaser, shall by a subsequent disposition by him, if no Protector, or being such, with his consent, be confirmed; if a Protector, and he shall not consent, and the voidable estate shall not be good to the extent of the estate which the tenant in tail could create without such consent, then the same shall be confirmed, so far as the tenant in tail could then make such disposition without such consent. But the estate shall not be confirmed against a purchaser without notice.

V. 37. Whenever a person entitled to a base fee shall become entitled to the immediate reversion in fee, the base fee shall not merge, but shall be enlarged.

VI. 38. Any disposition by a tenant in tail under this act shall be effected by any assurance (except an agreement or will) by which he could have conveyed if seised in fee; and if a married woman, her husband's concurrence shall be necessary, and the deed effecting the disposition shall be acknowledged by her as after directed.

39. Consent of the Protector shall be given by the assurance by which the disposition of a tenant in tail shall be effected, or by a distinct deed before or at the time of the assurance.

40. If the Protector consent by a deed distinct from the assurance, it shall be considered unqualified, unless he refer to the assurance and confine his consent to the disposition thereby made.

41. Protector having given his consent, shall not revoke the same.

42. A married woman Protector may consent as if she were a feme sole.

43. No assurance by which a tenant in tail shall make a disposition under the act (except a lease not exceeding twenty-one years from the date, or not more than twelve months afterwards where the rent shall be the rack rent, or not less than five-sixths parts thereof) shall have any operation unless inrolled in Chancery within six calendar months.

44. The consent of a Protector, if by a distinct deed, void, unless the deed be inrolled with or before the assurance.

VII. 45. The previous clauses shall apply to copyholds; except that dispositions of legal estates therein shall be by surrender, and of equitable estates either by surrender or by deed as after provided, and except so far as they are varied by the clauses after contained.

46. If the Protector of a settlement of copy-

holds shall by deed consent to the disposition of a tenant in tail, such deed shall, at or before the surrender by the tenant in tail, be produced to the lord of the manor, or his steward or deputy, otherwise the consent shall be void; and the lord or steward, or deputy, shall by indorsement on the deed acknowledge such production, and enter such deed and indorsement on the rolls, and the indorsement shall be evidence of such production; and such entry, or a copy thereof, shall be evidence as any other entry or copy.

47. If the consent of the Protector of a settlement of copyholds shall not be by deed, it shall be given to the person taking the surrender of the tenant in tail; and if the surrender be out of Court, the consent shall be stated in the memorandum of surrender, and the memorandum signed by the Protector shall be entered on the rolls, and shall be evidence of the consent and surrender; but if the surrender be in Court, the lord or steward, or deputy, shall enter the surrender on the rolls, with a statement that such consent had been given; and the entries or copies thereof shall be evidence, as other entries or copies.

48. An equitable tenant in tail of copyholds shall have power by deed to dispose of the same under this act, as if freehold, such deed to be entered on the court rolls. If a Protector, and his consent be given by a distinct deed, the consent shall be void unless the deed be entered on the court rolls with or before the deed of disposition. Such entries shall be imperative on the lord or steward or deputy, and shall be evidence as any other entry or copy. The deed of disposition, unless entered on the rolls, void against purchasers.

49. Where a disposition of copyholds by a tenant in tail shall be by surrender or deed, such surrender, or the memorandum, or a copy thereof, or the deed of disposition, or the deed (if any) by which the Protector shall consent, shall not require inrolment.

VIII. 50. Repeal of the Bankrupt Act, so far as relates to estates tail, 6 G. 4. c. 16. § 65.

51. The Commissioner, in the case of an actual tenant in tail becoming bankrupt, shall by deed inrolled in Chancery, dispose of the same to a purchaser, and thereby create as large an estate as the actual tenant in tail could have done under this act if not bankrupt; but if there be a Protector whose consent would have been requisite to a disposition to the fullest extent, and he shall not consent, then the estate shall be an estate as large as such actual tenant in tail, if not bankrupt, could have created without such consent.

52. The Commissioner, in the case of a tenant in tail entitled to a base fee becoming bankrupt, shall by deed inrolled in Chancery dispose of the lands to a purchaser, and if there shall be no Protector, to the fullest extent to which the base fee could be enlarged by the bankrupt; but if there shall be a Protector, and he shall not consent, then only to the extent of the interest of the bankrupt.

53. Every deed of disposition under this act by the Commissioner of a Bankrupt, shall,

when inrolled, take effect as if inrolment not required.

54. Where there is a Protector, the disposition, with his consent, by the Commissioner, in the case of an actual tenant in tail becoming bankrupt, or of a tenant in tail entitled to a base fee becoming bankrupt, shall have the same effect as if made with the consent of the Protector by the actual tenant in tail or tenant in tail so entitled. The previous clauses as to consent, shall apply to every consent under this clause, except that where the consent to the disposition by the Commissioner shall be by a distinct deed, such deed shall be inrolled with the deed of disposition, or before, and in the same Court.

55. If the Commissioner shall under this act dispose of the lands of an actual tenant in tail becoming bankrupt, and in consequence of there being a Protector who shall not consent, a base fee shall be created, such base fee, if during its continuance there cease to be a Protector, shall be enlarged.

56. If a tenant in tail entitled to a base fee shall become bankrupt, and if when the Commissioner disposes of the lands under this act there shall be a Protector who shall not consent, such base fee, if during its continuance there cease to be a Protector, shall be enlarged.

57. A voidable estate in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a base fee becoming bankrupt, shall, by a disposition of the Commissioner under this act, if no Protector, or being such with his consent, be confirmed. If in the case of an actual tenant in tail there be a Protector, and he shall not consent, and the voidable estate shall not be good to the extent of the estate which the actual tenant in tail could create without such consent, then the voidable estate shall be confirmed, so far as he, if not bankrupt, could have made a disposition under this act without such consent; and if after the disposition by the Commissioner, and while only a base fee, there shall cease to be a Protector, then the voidable estate shall, so far as not previously confirmed, be confirmed as against all persons, except those whose rights are saved. But the estate shall not be confirmed against a purchaser without notice.

58. All acts of a tenant in tail becoming bankrupt, and which if he had been seised in fee would have been void against the assignees, shall be void against any disposition under this act by the Commissioner.

59. Subject to the powers given to the Commissioner, a bankrupt, actual tenant in tail, or a bankrupt tenant in tail, entitled to a base fee, shall retain his powers of disposition under the act.

60. The disposition, by the Commissioner, of the lands of a bankrupt, actual tenant in tail, or of a bankrupt tenant in tail, entitled to a base fee, shall, if the bankrupt be dead, and there be no Protector, or be dead leaving issue inheritable, be as valid as if he were alive.

61. The assignees, until the disposition by

the Commissioner of the lands of a bankrupt, of which such Commissioner has power to make disposition under the act, shall receive the rents of the lands, and shall recover the same and enforce covenants and conditions against the lessees of such lands, as if entitled to the reversion, and shall have the same powers, notwithstanding the death of the bankrupt, in case he should die before any disposition by the Commissioner.

62. All the provisions of the act for the benefit of the creditors of bankrupts, and for the confirmation of their voidable estates, shall apply to their lands in Ireland.

63. Deeds relating to the lands of bankrupts in Ireland shall be inrolled in Chancery there.

IX. 64. Repeal of the statute 7 G. 4. c. 45, respecting entailed estates to be purchased with trust monies; 39 & 40 G. 3. c. 56, not to be revived.

65. Freehold, leasehold, or copyhold lands, to be sold where the purchase money is to be laid out in other lands to be entailed; and also money to be laid out in lands to be entailed, shall be subject to the same estates as the lands, if purchased, and the previous clauses shall apply, so far as circumstances will admit. But except in the case of bankruptcy, the assurance by which any disposition of leasehold lands or money shall be effected, shall be a deed which shall have no operation unless inrolled in Chancery within six calendar months. If a Protector, and his consent to any disposition of leasehold lands or money, be given by a distinct deed, the consent shall be void, unless inrolled in Chancery with or before the deed of disposition.

66. Freehold, leasehold or copyhold lands in Ireland, to be sold where the purchase money is to be laid out in other lands to be entailed, and money under the control of a Court of Equity in Ireland, subject to be laid out in lands to be entailed, shall be subject to this act in cases of bankruptcy.

67. Office copy of the inrolment of every deed required by the act to be inrolled, examined with the inrolment and signed by the proper officer, and proved upon oath to be a true copy, shall be evidence.

Fourth set of enactments.—New provisions respecting married women. I. Their powers of disposition with the concurrence of their husbands. II. Their separate examination and acknowledgment of deeds. III. Their separate examination on the surrender of their equitable estates in copyholds. IV. The Court of Common Pleas empowered to dispense with the concurrence of their husbands in certain cases. V. The act not to extend to Ireland except where expressly mentioned.

I. 68. After the 31st of December 1833, a married woman, in every case except that of being tenant in tail, may by deed dispose of lands of any tenure, and money to be laid out in lands, and dispose of, release, surrender or extinguish any estate therein, and may release or extinguish powers as if she were a feme sole; but to render the same valid, her husband must concur, and the deed must be ac-

known by her as after mentioned. Not to extend to copyholds where before this act she and her husband could have effected the same by surrender.

69. The powers of disposition given to a married woman by this act shall not interfere with any other powers she may have.

II. 70. Every deed by a married woman for any of the purposes of this act, except such as may be executed by her as Protector, shall be produced and acknowledged by her before a Judge or Master in Chancery, or two of the Perpetual Commissioners, or two Special Commissioners.

71. The Judge, Master in Chancery, or Commissioners, before receiving the acknowledgment of a deed by a married woman, shall examine her apart from her husband, and unless she freely consent, shall not permit her to acknowledge the deed.

72. The Lord Chief Justice of the Common Pleas shall appoint Perpetual Commissioners for each county, for taking acknowledgments; and lists of the Commissioners for each county shall be made out and kept by the officer of the Common Pleas who is to have the custody of the certificates after mentioned; and such officer shall transmit to the Clerk of the Peace for each county, or his deputy, a copy of the list for that county, and shall deliver a copy of the list for any county to any person applying; and the Clerk of the Peace, or his deputy, shall deliver a copy of the list last transmitted to him to any person applying.

73. The power to Perpetual Commissioners to take acknowledgments, shall not be confined to any particular place.

74. If from being beyond seas, &c. a married woman be prevented from making the acknowledgment before a Judge or a Master in Chancery, or any of the Perpetual Commissioners, the Court of Common Pleas or any Judge thereof may appoint Special Commissioners for the purpose.

75. When a married woman shall acknowledge a deed, the Judge, Master in Chancery, or Commissioners taking the acknowledgment, shall sign a memorandum, to be indorsed or written at the foot or in the margin of the deed, to the effect mentioned in the act, and shall also sign a certificate of the taking of such acknowledgment, to be engrossed on a separate piece of parchment, which certificate shall be to the effect mentioned in the act.

76. Every certificate, with an affidavit verifying the same, shall be lodged with some officer of the Court of Common Pleas, who shall examine the certificate, and see that it is signed and verified, and contains the requisite statement, and if so, shall cause the same and the affidavit to be filed of record in the said court.

77. On the filing of the certificate, the deed shall by relation take effect from the time of its having been acknowledged.

78. The officer with whom the certificates are lodged shall make and keep an index of the same.

79. After the filing of a certificate, the officer shall, on application, deliver a copy

thereof, signed by him, and such copy shall be evidence of the acknowledgment.

80. The Lord Chief Justice of the Common Pleas shall appoint the officer with whom the certificates shall be lodged; and the Court of Common Pleas shall make orders touching the examination, memorandums, certificates and affidavits, and the time when the proceedings shall take place, and the amount of fees.

III. 81. A married woman shall be separately examined on the surrender of copyholds, to which she alone, or she and her husband in her right, may be entitled for an equitable estate, as if such estate were legal.

IV. 82. Power to the Court of Common Pleas in the case of a husband being lunatic, or otherwise incapable of executing a deed or making a surrender of copyholds, or of his residence being unknown, or of his living separate from his wife, by an order on the application of the wife, to dispense with his concurrence in any case except as Protector, where he is lunatic, or convicted of treason or felony.

V. 83. The act shall not extend to Ireland except where expressly mentioned.

THE COMMON LAW AMENDMENT BILL, AND THE COMMISSIONERS' REPORTS.

PLEADINGS.

(Concluded from p. 480.)

IN the discussions in Parliament on this Bill, much has been said on the clause authorising the Judges to make rules and regulations relative to Pleadings. We continue our extracts from the Second Common Law Report, which will explain the views of the Commissioners on this subject.

“It has appeared to us to be a proper accompaniment of these relaxations of the law of variance, to abolish the present style of traversing, *modo et formâ*, and to declare that in future certain other forms of denial shall be substituted, more adapted to a state of pleading which regards rather the substance than the precise terms of the allegation. The whole provisions, of which we have thus given the principle and outline, will be found in the subjoined Regulations.

As already stated, we propose in connexion with these changes, to confine the plaintiff to one count upon each cause of action, and the defendant to one plea upon each ground of defence; or (as it may be otherwise expressed) to prohibit the use of several counts or pleas where adopted for the mere purpose of alternative statements; and where it is not intended to establish under them distinct and concurrent causes of action, or grounds of defence. By such a restriction, all variations in the way of special and general counts or pleas, or of counts or pleas omitting certain particulars al-

leged in other counts or pleas, but in other respects identical with them, will become inadmissible. As some inconvenience, however, might, notwithstanding the proposed relaxation in the law of variance, arise in the particular instances of the *general counts* in debt, or assumpsit, for *goods sold* and *work and labour*, and the *money counts* in the same actions, if the plaintiff were compelled to confine himself to one particular subject of claim, it seems desirable to provide in these actions a new form, consolidating into one count, the claims for goods sold, work done, money lent, money paid, money had and received, and money due on an account stated. This form will be found among those subjoined to this Report. The plaintiff should be at liberty either to use the count in its entire shape, or, at his option, to leave out such of its articles as he thinks unnecessary to his purpose. There are other cases too, in which the new system proscribing the use of more than one count or plea, might perhaps be found to work more easily, if some alteration were made in the ordinary forms of declaration and plea now adopted in particular instances. Such cases we shall take an opportunity of examining, when the time shall arrive for reporting upon the pleadings in particular actions. But we think this consideration need not prevent the immediate adoption of the general plan. Such subordinate provisions might easily, if necessary, be determined upon and introduced, in framing any bill to be founded on the present Report.

“While singleness is thus enforced in respect of the same demand or defence, the plaintiff is still to be at liberty to use as many counts as he has distinct and real causes of action. Thus he may declare in one count on the acceptance of a bill of exchange, and in another, on the consideration, for example, goods sold. So the defendant may adopt as many pleas as he has distinct and real grounds of defence. In respect of pleas as well as counts, this variety ought, we think, to be allowed independently of the *permission* of the Court. The rule now obtained for leave to plead several matters, is a source of expense; and the course of practice relating to it, is in other respects unsatisfactory and vexatious. In the King’s Bench, where the motion is of course, scarcely any restriction is in fact secured by it; in the Common Pleas, where the mode of proceeding is different, and where the Court exercises a discretion before leave granted, great embarrassment frequently arises, and a want of certain principle is severely felt. From our observation of its effects, we should recommend the abolition of this branch of practice, even though no rule should be adopted for limiting the defendant to a single plea upon each defence; but in connection with such a rule, enforced by other proper provisions, the propriety of its abolition seems unquestionable. We conceive too, that with the single exception of the plea of *tender*, no plea ought to be disallowed upon the ground of its inconsistency with another defence upon the same record. It is the opinion, we know, of some intelligent persons, that when there is a plea in denial of

any fact, the addition of another plea in avoidance of the same matter (which always purports to be founded on a confession that the fact is truly alleged) is repugnant and unreasonable; and that the practice, therefore, requires to be absolutely forbidden. But on full consideration we find ourselves unable to subscribe to this opinion. For the effect of the first plea, fairly considered, is merely to insist that the plaintiff should prove his cause of action; and the case may be such, that either through lapse of time or other circumstances, the defendant may be ignorant of the true state of fact, and may without injustice require the cause of action to be established in proof, before he is called upon to prove any affirmative defence. Thus, to an action for goods sold, it appears to us that the defendant may in many cases, without impropriety, plead first in denial of the sale and delivery; and secondly, that the goods were paid for; for where the purchase is alleged to have taken place at a remote period, and to be of no considerable amount, it may not improbably be forgotten by him. He may not know whether he bought such goods or not, but may know, that if they were bought, the debt must have been long since paid. The objection, therefore, to such pleas, founded on their manifest, and necessary repugnancy, fails; and though in many cases they are doubtless inconsistent, this seems to be no reason for applying to them any severer restriction than it may be thought right to provide against all other defences placed on the record, without regard to the true state of fact. A false plea ought in all cases to be attended with some penal consequence; and when the time shall arrive for considering the subject of costs, we hope to be able to propose such provisions as shall more effectually check the use of pleas of this description, by throwing the whole expense of them in all cases upon the offending party, without regard to the general event of the cause.

“We are also of opinion, that to each plea pleaded by the defendant, the plaintiff ought to be allowed to *reply several matters*. Thus to a set-off, he should be allowed to reply in denial, and also to reply the statute of limitations. To a plea of the statute of limitations, to reply that the action accrued within six years, and also that the defendant was beyond sea when the cause of action accrued; to a plea of infancy, to reply that the defendant was of age, and also that the goods sold were necessities. The present rule of practice by which the plaintiff is confined to a single replication, while the defendant is enabled by leave of the Court to vary and multiply his defences, has long been considered as objectionable from its apparent inequality; an objection that presents itself in a point of view still more striking, when it is recollected, that the same restriction does not apply in cases where the Crown is plaintiff. The regulation has been defensible, chiefly upon the ground of the inconvenient complexity of pleading, and variety of issues, which the power of replying severally to each plea would have a tendency to produce; but if

the plaintiff were permitted to reply severally, only where the matters of replication were really several and distinct in their nature, (and it is of course only to this extent that we would relax the present rule) the record would be incumbered by it in a degree much less than is commonly supposed; for at each successive stage of the pleadings, the new matter is of course continually more and more exhausted, and the occasions for replying several matters are therefore not of very frequent occurrence. It is to be considered too, that if, in pursuance of a preceding recommendation, the defendant is to be allowed only one plea in respect of each matter of defence, this change will also strongly tend to prevent the complexity that might otherwise arise from several replications. Supposing the change last-mentioned to take place, and that the defendant is nevertheless allowed to plead several pleas, where he has several grounds of defence, we think the present rule prohibiting more than a single replication, where the plaintiff has several grounds of reply, cannot with justice be maintained. With respect to the particular instance, where the plaintiff has to reply to a plea of set-off, its inequality is peculiarly objectionable; for the set-off is in the nature of a cross action, and if the defendant had set up the same claim by way of declaration, the plaintiff would then have had the power, according to the present practice, of opposing to it by leave of the Court, any variety of answers; though in the case supposed, he is limited to one. As in the case of pleas, so in that of replications, we see no reason for encumbering the practice with any rule that the permission of the Court for several pleadings should be obtained. We propose in like manner, that the defendant should be at liberty to make several rejoinders to each replication under similar restrictions, and so with respect to all subsequent pleadings."

We are still of opinion, notwithstanding the objections which have been made to investing the Judges with power to regulate Pleadings, that such power ought to be conferred; it is by no means greater than other powers with which they are entrusted; and as their authority is exercised in public, and before a watchful and intelligent profession, there can be no fear of abuse.

THE PROPERTY LAWYER. No. XIV.

ANTICIPATION.

THE following case decides an important point in conveyancing practice; *viz.*, that in order to render a clause against anticipation by a married woman effectual, the fund must be limited over to another person, in case of any attempt to alienate.

Charles Newton, by his will, directed his trustees to divide his property, and thereout to pay an annuity to his daughter Mary Newton, for her own sole and separate use and benefit, whose receipt alone, from time to time, notwithstanding any husband she might thereafter have, should be a sufficient discharge; it being his express desire that the annuity should not be subject to the debts, management, controul, will, or engagements of any husband she might have, but that she should not be at liberty in any way whatever to sell, assign, or in any way dispose of the annuity; or if she did do so, he declared such sale void and of no effect; his intention being, if any accident in life should unfortunately happen to her, that she should be kept from want. And he gave unto his daughter Ann Newton an annuity of 50*l.* per annum for her life, which he directed his trustees to pay to her half yearly, on the same express terms and conditions as thereinbefore particularly mentioned respecting his daughter Mary, it being, for the very same reasons, so given to her. Ann Newton married George Appleton, and by an indenture dated 8th February, 1821, in consideration of 270*l.* then due and owing by Appleton to William Sikes, John Watson, Henry Sikes, and Thomas Wilkinson, and of a further sum of 250*l.* paid by them to Appleton, he and his wife assigned to W. Sikes, J. Watson, H. Sikes, and T. Wilkinson, all the sum and sums of money, chattels, and effects whatsoever of and belonging to George Appleton and Anne his wife, or to which they or either of them were or should thereafter become entitled under the said will, upon trust for securing the re-payment of the two sums of 270*l.* and 250*l.*, with interest. By another indenture, the further sum of 1000*l.* was secured to Sikes and Co. in like manner. Under the proceedings in the cause, the several sums of stock following (that is to say) in Bank 3 per cent. annuities 1843*l.* 6*s.*; in new 3½ per cent. annuities 552*l.* 2*s.* 11*d.*; and in cash 387*l.* 7*s.* 5*d.* were carried over to "Ann Appleton's annuity and residuary account." A petition was presented by Appleton and his wife, insisting that the restrictions contained in the will against the sale and disposition of the annuity of 50*l.* for the life of Ann Appleton were void and of no effect; and stating, that they were desirous that such annuity should not be purchased, and praying that the 1843*l.* 6*s.* Bank 3 per cent. annuities, and 552*l.* 2*s.* 11*d.* 3½ per cent. annuities might be sold, and the proceeds, with the cash standing to the same account, applied in payment of Sikes' debt, and the residue paid to George Appleton.

Mr. Turner, for the petitioners, cited *Barton v. Briscoe*, Jac. 603.

Mr. Swann for the trustees.

The *Vice-Chancellor* held, that the annuity not being given over upon alienation, the restrictions were void; and ordered according to the prayer. *Newton v. Reid*, 4 Sim. 141.

REVIEW.

An Alarm on the Rights of the Poor, and the Property of the Rich, in Danger, from a supposed Law Reform. By George Strickland, Esq., M.P. Ridgway. 1833.

THIS pamphlet is not without its value, as it shews that many of the sentiments respecting a precipitate Law Reform, which we have urged, as the representatives of the profession, are also those of intelligent persons unconnected with it. We confess, however, Mr. Strickland goes further than we do, in his objections to some of the proposed measures; and we shall shortly mention in what respects we differ from him. With the following observations on the new Bill for the Limitation of Actions relating to Real Property, we fully agree:

"The old law of England was humane; it gave the poor man the privilege to make an entry, and to claim his right without an expense; and to continue that claim till he could procure assistance, and the means of advancing and asserting his rights. Since the reign of Henry VIII., sixty years have been allowed for this purpose.

"But a Bill has now been a third time introduced into the House of Commons, to cut down this period to twenty years—nay, with unexampled severity, cruelty, and oppression, this Bill, for 'The Limitation of Actions and Suits relating to Real Property,' has an *ex post facto* operation; so that the poor man, who has been unjustly kept out of his property—although he may have made an entry according to the common law of his country—though he may have expended every guinea he possessed, in procuring evidence to enforce his right—though he may have incurred debts to kind friends, who had come forward to assist him—though, upon the point of obtaining his long delayed rights, he may find, by a new, cruel, and unjust retrospective law, that his legal entry and claim are no longer to avail him—that the twenty years have just expired since his right first accrued—that he is cut out from his inheritance, and from his birth-right—and that his base and unjust opponent is to enjoy his lands, and his possessions, and to reign in his stead. He is left to die in a jail, neglected, insulted, and oppressed.

"Of all species of trial, and of all branches of the law, proving a pedigree is the most expensive, and is attended with the greatest difficulties; arising, in some degree, from the imperfect state of registration of births, marriages, and deaths, and, frequently, from the frauds committed by the persons holding illegal possession of property. Instances are not wanting where parish registers have been taken away, or defaced, or altered, and where

monuments have been broken down, to obstruct the proofs of an adverse claimant; and such obstacles, imposed by the affluent possessors, have frequently delayed the progress of a poor man, so as to render twenty years, even if he had been acquainted with his right so long a time, quite an insufficient period; especially, if, as by this new and extraordinary alteration of the long established laws of our country, an entry and a claim are to be of no effect."

Mr. Strickland next takes an objection to a clause in the Inheritance Bill, which allows a descent to lands to be traced through any relative who has been attainted; and warns all proprietors of lands, in former times forfeited to the Crown by the treason of their owners, and re-granted to other persons, to be on their guard against this clause; as he considers that, if a descent may be traced through a person attainted, these lands may be recovered from their present owners. It must be recollected, however, that the present owners of forfeited lands have most of them had possession for more than sixty years, and could therefore successfully defend an action.

The author then states that the Real Property Bills are not Government measures, although introduced by the Solicitor General. He regrets that they are to be forced through the House of Commons "with extraordinary, and no very decent precipitation. On Wednesday the 13th of March, after four hundred members had left the House, at a quarter before two o'clock in the morning, Sir John Campbell moved the second reading, when there were not above ten members present; but this was opposed, upon the grounds that these bills had not been explained, much less discussed. The reason given for this rapidity is a matter of deep importance, in a public point of view. The Solicitor General stated that he could not explain these bills on the second reading, because he had done so in a former Parliament. Now, even supposing that any satisfactory explanation had been given in a former Parliament, the present House of Commons contains three hundred new members; and is it not something like disrespect to them, that bills of such alarming consequences should be passed through a second reading without any explanation or any discussion?"

These reflections are just; and we have repeatedly deplored the careless and unsatisfactory manner in which Law Bills are passed through Parliament.

The objections which Mr. Strickland raises to the Curtesy and Dower Bills, are

not, however, we think, so well founded. He mentions some instances of individual hardship, which will arise if they pass; but that we must always expect in all measures of reform, good or bad; the general welfare can only be looked to. The Dower Bill excites the Honorable Member's peculiar indignation; and he stands forth as the champion of maids, wives, and widows. After mentioning the clause which will in future alter the Law of Dower, he asks—

“Where, it may well be demanded, can be found any justification of all this cruelty—of this abandonment of the rights and happiness of unfortunate widows? Better, as in the half-civilized nations of the East, burn them alive upon the funeral pile, than deceive them with false expectations, and abandon them to hopeless misery, poverty, and beggary. The retrospective effect of this law, again, must act as an utter fraud and deception against those who have already married under an expectation, amounting to certainty, that they should have, at least, one-third of their husband's land for their support.

“And towards whom, I repeat, is all this cruelty, and this abandonment to be practised? *Towards the most amiable, the distressed, the most hapless, but praiseworthy portion of society.* No person is so deeply to be pitied as a widow, who, having lived in affluence and splendour with her husband, is suddenly reduced to poverty, with, perhaps, a large family of helpless children, ill provided for, and no richer than their unfortunate and broken spirited mother. In no situation of life do virtue, and excellence, and submission to the decrees of Providence, shine forth in such perfection, as in the English widow, retiring from her former splendid mansion to a cottage, and to a village, with unceasing industry educating her children, and struggling, against adverse fortune, to get them on in the world. But if such be the fate, and such the conduct of those in higher station, the case is not less distressing in the middle walks of life. It is a false assertion, that, in this class, persons do not usually marry without settlements: they do so to avoid the expense of settlements, and the perplexities of the law, relying upon ancient usage, and the long established right of the widow to her thirds. But the tender mercies of Law Commissioners cannot stoop to attend to the distresses of the poor, or to the tears of the widow.”

We presume that the House will be ungallant enough to withstand this appeal to their feelings, without regard to the contents of the lantern.

LOCAL COURTS INJURIOUS TO TRADE.

To the Editor of the Legal Observer.

Sir,

THE Lord Chancellor having again introduced his long threatened measure for the erection of Local Courts, I take the liberty of forwarding you a few observations upon that portion of it which relates to the proceedings for recovery of debts.

The Bill, it appears to me, proceeds altogether upon erroneous principles; and supposes, as many of our modern legislators seem to have done, that *the debtor is the injured party*, and that the creditor, who seeks to recover a just demand, is arbitrary, harsh, and severe, and therefore every possible difficulty and expense should be put in his way, to shield the debtor. To illustrate this, it will be only necessary to consider the proceedings a creditor will have to adopt to recover a debt under 20*l.*

Suppose the parties to stand in the relation of a wholesale dealer residing in London, being the plaintiff,—a shopkeeper in Southampton the defendant;—and I believe nine-tenths of the writs issued to the country are at the suit of wholesale traders.

The Bill, first most benevolently and liberally acting upon the old hackneyed phrase “that justice should be brought home to every man's door,” directs that all actions shall be brought in the district where the debtor resides; for such certainly is the meaning of the 17th section as it now stands, notwithstanding the words put in brackets by you in your last number, as the 21st section provides that the demand shall be served by the messenger of the court, who, of course, will confine himself to his own district, and that the place of trial shall be the place appointed for the district in which the defendant resides.

The plaintiff in the case referred to, will therefore, in the first place, apply to his attorney in London to proceed. The attorney then prepares “the demand,” which he forwards to another attorney residing in the town where the court for that district is held, to file with the registrar, who causes the defendant to be served with a copy thereof, and notice that twenty-one days after, and on a day named, the trial will be had. The defendant then is to be at liberty, if he think fit, to cause the plaintiff or plaintiffs (and there may be four or five) to appear before the Judge at chambers (of course in the town where the court is held), and be examined touching the matter at issue; and should there be several members of a firm thus summoned, they would rather, no doubt, abandon a debt of 15*l.* or 20*l.*, than be put to the inconvenience and expense of travelling perhaps 200 miles to appear before the Judge; but no, they are not at liberty to do that: they must appear, or the proceedings will be stayed, and they will be fined at the discretion of the Judge, and the fine paid over to the debtor;

so that it is likely to occur that the defendant will be enabled to pay the plaintiffs' claim by the fines recovered from them. Well, Sir, the plaintiff having, with his demand, given notice of trial, he must proceed to trial in every case whether defended or not, and be prepared to prove the delivery and value of every article as if it were disputed to the utmost. Should his traveller be at the Land's End, Cornwall, and the trial take place at Southampton, he must bring his traveller to town, and take him, with his other witnesses, to the place of trial; and his London attorney, who knows the facts of the case, must accompany them, or a brief must be prepared and forwarded to the country attorney, to conduct the cause in court, or give to counsel.

When the plaintiff, residing in London, has thus prepared himself, he is not sure that his trial will come on at the time fixed; for the defendant may, *three* days before the trial, apply to the Judge to postpone the trial, which the Judge may grant if he see fit, thereby giving such plaintiffs as may reside more than 100 miles from the place of trial no opportunity of countermanding the attendance of their witnesses. Sir, in this march of intellect, this age of steam-carriages and rail-roads, time is altogether annihilated. The plaintiffs will be bound always to keep themselves in readiness to attend the Judge, on one day's notice, 100 or 200 miles off; and as for witnesses, they may have two or three excursions before the cause is disposed of.

Unprincipled debtors may rejoice at this new provision; for if they have no goods, or can convey them to any friend, they may set their creditors at defiance, for they are sure to put them to the expense of a trial, without putting themselves to the expense of sixpence, or at all injuring themselves in the eye of the Insolvent Judge; or, if they think fit, they may, at the expense of a few shillings, make themselves secure of getting rid of the debt altogether, by summoning the plaintiffs to appear to be examined, and then offering to abandon the examination if the plaintiffs will forego their debt: this, I am sure, in a majority of instances, would be acceded to.

I should be glad if the framer of the Bill would consider the following questions, and then, if he can answer them in the negative, say whether it will be worth while for a wholesale trader to proceed against a debtor residing more than fifty miles from him; and if in the affirmative, whether the expenses will not be greater in such a case than at present.—Will there be any allowance made in the costs for the charges of the creditor's attorney in taking instructions to sue, preparing the brief, and correspondence with the country attorney, or for the charges of the country attorney for correspondence with the London attorney, or for the loss of time and travelling expenses of the creditor's attorney in attending the trial; or to the creditors for their loss of time and expenses attending to be examined before the Judge; or for the loss of time and expenses of their witnesses, on the average at least three

in each case, and usually the clerks or servants of the creditors?

Why, Sir, the inconvenience alone to a wholesale house, of being without the assistance of their clerks and servants for two or three days, would not be compensated for by the value of a debt of 15*l.*; and woe betide the unfortunate trader who should happen to be his own traveller, and have sold the goods sued for; he must, if he once commence proceedings, go to trial; and although the defendant never perhaps dreamed of defending the action, he will be defeated, because he cannot prove the sale and delivery of the goods.

My letter having already extended to a greater length than I had at first intended, I shall now abstain from commenting upon some other points, arising from the number of Courts, and the powers given to the creditors over the debtor's property, which I shall perhaps do on a future occasion; but conclude, after shortly pointing out the effect I think the new Bill will have on the credit of the country.

I think, Sir, if a creditor is put to all the inconvenience and expense proposed by the new Bill, he will not credit any man for a sum under 20*l.* The country shopkeeper, who, dealing in a great variety of goods, and trading upon the capital of the wholesale houses, does business with perhaps twenty persons, to make up his amount of credit, will be obliged to take goods he does not want and has no sale for; because the next time the traveller goes round, and payment is expected, not having sold the goods, he will be obliged to raise the money at a sacrifice, and so will continue doing until it leads him to ruin. There is nothing, I conceive, so injurious to trade, as compelling the retail trader to take more goods than he can command a sale for in the ordinary way of his business; and this, I submit, will be the effect of placing the creditor so much in the power of the debtor, where he seeks to recover so small a sum.

I am, Sir,
Your old correspondent,
P.

N. B. I should suggest, as an amendment to the Bill, that if the defendant did not answer within eight days after service of the demand, judgment should be signed, and execution issue, for the amount mentioned in the demand.

ON BILLS FOR TAKING PARTNERSHIP ACCOUNTS.

It has for some time been considered a doubtful point, whether a partner could file a bill against his co-partner for an account, without also praying for a dissolution of the partnership. Lord *Eldon*, C, has frequently expressed an opinion that a dissolution must always

accompany an account, as otherwise the stock could not be valued, as there would be no period at which the account should stop. *Forman v. Homfray*, 2 Ves. & B. 329; *Marshall v. Coleman*, 2 J. & W. 266; *Waters v. Taylor*, 15 Ves. 10. The present Master of the Rolls (Sir John Leach) has, however, laid down a contrary doctrine, and has allowed an account to be taken under a bill which contained no prayer for a dissolution. *Harrison v. Armitage*; and see *Glassington v. Thwaites*, 1 Sim. & Stu. 124. And in a more recent case not reported, which was an appeal from a decision of Mr. Justice Goulburn, on the late Carmarthen Circuit, the Master of the Rolls adhered to his former opinion. The point has lately come before the present Vice-Chancellor (Sir L. Shadwell), and he has decided it according to the rule laid down by Lord Eldon.

The circumstances were these:—The plaintiffs and defendants were co-partners, as carriers on the Western Road, under articles of co-partnership for seven years, from the 1st of July, 1822, “and so from seven years to seven years till determined by notice.” The first period of seven years having expired, and no notice of dissolution having been given, the partnership was continued for another period of seven years, of which one year had elapsed at the time when the bill was filed. It charged that the defendants were indebted to the plaintiff for the profits of the partnership received by them, and prayed for an account of the dealings of the partnership from the foot of an account which had been settled on the 30th of June, 1827: that the defendants might account for all the monies received by them from the partnership business since that time, and that the plaintiff’s share of such monies, after paying the partnership debts and making all just allowances, might be paid to him. The defendants put in a general demurrer.

The Vice-Chancellor.—I take this to be a bill which purposely avoids the prayer for a dissolution, and that it was not in the contemplation of the plaintiff that the partnership should be put an end to. It would therefore be a surprise upon the parties to this record, if I were to deal with it as if a dissolution were sought. Here the partnership is still subsisting, and the bill is filed for an account merely of the dealings and transactions of the partnership. With respect to the law of this Court upon this subject, there is no instance of an account being decreed of the profits of a partnership, on a bill which does not pray a dissolution, but contemplates the subsistence of the partnership. The opinion of Lord Eldon on this subject, has been from time to time expressed, both before and since the decision of *Harrison v. Armitage*. Suppose that the

Court would entertain a bill like the present, and direct an account to be taken of the dealings of a partnership, and that it appeared by the Master’s report that a balance was due from the defendant to the plaintiff; then, upon further directions, the plaintiff would ask for an order that the balance might be paid to him. It would, however, be competent to the defendant to file a supplemental bill, in order to shew that since the account was taken a balance had become due to him from the plaintiff, after giving the plaintiff credit for the amount found due to him by the Master; and thus the matter might be pursued with endless changes, and supplemental bills might be filed every year that the partnership continued, and a balance would never be ascertained till the partnership expired or the Court put an end to it. This Court will not always interfere to enforce the contracts of parties; but will, in some instances, leave them to their remedy at law, as in the cases of agreements for the purchase of stock, or for the building of houses. With respect to occasional breaches of agreements between partners, when they are not of so grievous a nature as to make it impossible that the partnership should continue, the Court stands neuter; but when it finds that the acts complained of are of such a character as to shew that the parties cannot continue partners, and that relief cannot be given but by a dissolution, the Court will decree it, although it is not specifically asked. Here a dissolution is not prayed for, and if the Court were to do what is asked, it would not be final. Having regard, then, to the opinion expressed by Lord Eldon, both before and after the decision in *Harrison v. Armitage*, my settled opinion is, that this bill cannot be maintained; and therefore the demurrer must be allowed.—*Loscombe v. Russell*, 4 Sim. 8.

SUPERIOR COURTS.

Vice Chancellor’s Court.

INJUNCTION.

A watch-maker, having long used a Turkish word, in Turkish characters, engraved upon watches made by him for the foreign market, where they were in high estimation and had great sale, has an exclusive right to the use of the distinguishing marks.

Mr. Knight moved for an order to restrain the defendants from further manufacturing or exporting to Constantinople, or any port in the Levant, watches manufactured after a pattern of the plaintiff’s, and marked by a Turkish word, engraved on them in Turkish characters, which, interpreted in English, signified “WARRANTED.” The affidavit in support of the motion stated, that the plaintiff had long manufactured watches for the markets of Constantinople and other places in the Levant, and his watches had acquired great re-

pute there, and a ready sale : they were distinguished from all others, not only by the names, but also by the word "*Cesendede*," (warranted) impressed upon each in Turkish characters. The defendants, Messrs. Parkinson and Frodsham, had manufactured, and were now exporting, together with the two other defendants, a number of watches, with that distinguishing word upon each of them, and made also, in other respects, to resemble and pass for the plaintiff's watches, so as to interfere with and injure their sale, and damage their character.

Mr. *Spence*, for Messrs. Parkinson and Frodsham, said, they were not aware that they had been counterfeiting the plaintiff's watches. They were applied to by the other two defendants to make a quantity of watches for them, for export, and to impress on them the Turkish characters already mentioned. There was no law to prevent the defendants from affixing the word "warranted," in Turkish, to their watches, or limit the exclusive use of it to the plaintiff.

The *Vice-Chancellor* held, that the plaintiff, under the circumstances stated, had acquired, by long previous usage, the exclusive right to designate his watches by this Turkish word, in Turkish characters. The object of affixing the same mark to the watches manufactured by the defendants was, no doubt, to make them pass for the plaintiff's, the sale of which could not but be thereby injured. He should, therefore, grant the injunction.—*Gout v. Aleplogphu Parkinson and others*, E T., April 15th, 1833.

Rolls Court.

WILL.—CONSTRUCTION.

*A. bequeaths 2000*l.* to B., and if B. die before A., the legacy is directed to go to B.'s executors.—B. having died before A., and having in her will appointed a residuary legatee and executors, the 2000*l.*, upon the death of A. without altering his will, is adjudged to be for the benefit of B.'s residuary legatee.*

A question arose upon the construction of a will, under the following circumstances. The testator, among other legacies bequeathed out of a certain fund, directed a sum of 2000*l.* to be paid to a Mrs. Brown, and added a proviso, to the effect that if any of the legatees should die in his own (the testator's) life-time, the share of such legatee should be paid to that legatee's executors. Mrs. Brown died in the testator's life-time, having previously by her will, duly made and published, bequeathed several legacies, and appointed executors and a residuary legatee. The testator died some time after, without having altered his will. The question for his Honor's decision upon these facts was, whether the legacy of 2000*l.* was to be paid to the executors of Mrs. Brown for their own benefit, or for the benefit of the residuary legatee, or of the next of kin of Mrs. Brown.

The *Master of the Rolls* was of opinion, that the 2000*l.* should be paid to the executors of Mrs. Brown for the benefit of her residuary legatee. The circumstances of the case warranted the presumption, that the residuary legatee was the person to whom she would have left this legacy, if she had lived to come into possession of it.

Palin v. Hill, at the Rolls Sittings after Hilary Term, 1833.

AGREEMENT WITH A TRUSTEE.

A husband agrees with a trustee of property, to which his wife becomes entitled, to settle a moiety thereof on himself, the Lord Chancellor having decided that the husband is, notwithstanding that agreement, entitled to receive the trust fund with the wife's consent,—the Master of the Rolls decides according to that decision, but is still of opinion that the agreement amounts to a settlement, in the benefits of which the children of the marriage are interested.

This was a petition presented by Mr. and Mrs. Fenner, praying for an order for the transfer of a considerable sum of certain stock, to which Mrs. Fenner became entitled upon the death of her mother. It appeared from the statements in the petition, and the observations of counsel, that soon after the marriage of the petitioners, the husband signed an agreement with the defendant, to the effect that one-half of the property to which the wife was entitled should be secured and settled on her. Upon application to Sir *William Grant*, when he was Master of the Rolls, that learned Judge was of opinion, that the said agreement did not constitute such a settlement as would give any benefit to the children of the marriage, or prevent the husband from possessing himself of the fund; and he accordingly ordered 3000*l.* thereof to be paid to him (the husband), upon Mrs. Fenner consenting in Court to such payment. Upon the hearing of a former petition, presented to the present Master of the Rolls, for the transfer of a further sum, no mention was made of that decision of Sir *W. Grant*; and his Honor decided quite the contrary, refusing the prayer of the petition. His Honor's decision was appealed from to the *Lord Chancellor*, who reversed it, expressing his concurrence in the opinion of Sir *W. Grant*, that Mrs. Fenner was at liberty, notwithstanding the agreement, to give the property to her husband.

The *Master of the Rolls* having adverted to these facts in giving his judgment, said, he should certainly follow the decision of the present *Lord Chancellor*, whatever his own opinion might be. He still adhered to that opinion, and for this reason: if this Court were called upon to order the execution of the agreement between Mr. Fenner and the defendant, it would, in his Honor's view of the case, direct a settlement in the usual form, and consequently the children of the marriage would be entitled to a benefit under it. He was of opinion that such a settlement would not be a

voluntary settlement, as it must have been considered by Sir *W. Grant* and the *Lord Chancellor*; for the agreement amounted to a purchase by the husband of the wife's equity in her fortune. It was expressly laid down in the case of the *Executors of Lord Hereford v. Lady Hereford*, that, under like circumstances, the husband was the purchaser of the wife's equity. But notwithstanding that this was his own opinion, he would not go against the decision of the present *Lord Chancellor*, but would grant the prayer of the petition, and permit the husband, upon his wife's consenting, to receive the sum prayed for.

Fenner v. Tylor, at the Rolls. Sittings after Hilary Term, 1833.

Exchequer.

COURT OF REQUESTS — COSTS.

To take advantage of a Court of Requests act, to deprive the plaintiff of costs, the defendant must bring himself directly and expressly within the words of the act; and therefore, if he merely swears "that he keeps a counting-house or warehouse," the act only specifying "warehouse," and leaves it doubtful whether he seeks his whole livelihood within the limits of the act, he does not shew sufficient to entitle the Court to interfere to deprive the plaintiff of costs.

This was an action brought for the recovery of 4*l.*, according to the particulars of plaintiff's demand; and this sum was found to be due by the jury, on the execution of a writ of enquiry in London. — had obtained a rule *nisi* for paying 4*l.* to the plaintiff, without costs.

Hutchinson shewed cause.—From the affidavits it appeared that the defendant bought, at a sale by auction, two parcels of stone-blue; the one at 4*l.* 17*s.* 6*d.*, the other at 4*l.*: the first was paid for, but not the last: the defendant disputed his having received the latter parcel: the affidavits were contradictory as to the place where the goods were directed to be sent; but it appeared that, in the Lower Deptford Road, there was the name of J. G. Peacock, stone-blue manufacturer, which the defendant swears was his father-in-law. This was out of the city of London; and the plaintiff swore he did not know the defendant had any place of business in the city. The plaintiff's counsel contended, that the case was within the London Act or the Deptford Act (but the London Act appeared, on the affidavits, to be out of the question); and that, as there was no fraud shewn, he was entitled to the protection of the latter act. For the defendant it was contended, that the plaintiff had not brought himself within the act. It is unnecessary to detail the arguments of counsel, as the reasons for the judgment are fully stated by the Court.

Bayley, B.—This rule ought to be discharged, upon the plain language of the act, as contrasted with defendant's affidavit. The act^a

describes the persons liable to the jurisdiction of that act, as "residing or inhabiting within the said hundreds, or either of them, or keeping house, warehouse, shop, shed, stall, or stand, or seeking a livelihood, or trading or dealing within the said hundreds." You are to look at the language of these descriptions, and see if the defendant has brought himself within it. He describes himself as "carrying on business at Allhallow's Lane for some years, and that he keeps a counting-house or warehouse, not saying which, but in the alternative, (a counting-house not being mentioned in the act,) for the reception of goods at such counting-house or warehouse, in the way of his business, and attends in business hours; that he has there more goods and property than sufficient to pay the 4*l.* and costs, and that said counting-house or warehouse is in London." He does not state he gets his livelihood there: he must get his *whole* livelihood there. He goes on and states that "he is merely a lodger at his father's house, and that his general place of business is at Allhallow's Lane; but he does not negative his occasionally carrying on business at Deptford: then he gives his address at Deptford, and describes himself as a blue manufacturer, and directed the goods to be delivered at Allhallow's Lane. On his own affidavit he has not brought himself distinctly within the act: he ought to have had the act before him at the time of making his affidavit: he does not say positively that he has a warehouse.

Vaughan, B.—He must bring himself directly and expressly within the act.

The other Barons concurred.

Rule discharged.—*Newton v. Peacock*, H. T. 1833. Excheq.

HUSBAND AND WIFE.—LACHES.

In an action against husband and wife, for a debt incurred by the wife dum sola, the Court refused, at the instance of the husband, to set aside an appearance entered for both, it appearing that the wife had given instructions to the attorney.

If an attorney appears for one without authority, and he applies quickly to the Court, semb. that the Court will interfere to protect him.

Watson shewed cause against a rule calling on the plaintiff to shew cause why the appearance entered by one John Williams, an attorney of this Court, for the defendant, should not be set aside, and why the said John Williams should not pay the costs. This is an action against husband and wife; the affidavit on which this rule was obtained was only sworn by the husband; and though he denies that he ever authorized Mr. Williams to enter an appearance for him, does not deny that his wife gave such authority; my affidavit in answer states what I consider to be a fatal objection at the outset; namely, that the defendant is under terms to plead issuably, and take short notice of trial.

^a 47 Geo. 3. sess. 1. c. iv. § 5. the Deptford Act.

Bayley, B.—Yes, but these terms were made by the very man whose authority is denied.

Watson then cited *Latuch v. Pusherante*, Salk. 86; *Anon. ib.*; and *Anon. ib.* 88; that if an attorney takes upon himself to appear, the Court will look no further, but proceed as if the attorney had sufficient authority, and leave the party to his action.

Bayley, B.—In one of those cases, the defendant did not apply till after judgment; whereas, in this case, the defendant has come as soon as possible. When was this application made? And when was the writ of summons returnable?

Espinasse.—The summons was returnable on the 9th, and my affidavit was sworn on the 17th, and the application made on the 18th.

Watson.—The time at which the application was made was immaterial, if there had been no authority.

Bayley, B.—The time is very material; after judgment a very considerable expence had been incurred by the plaintiff, who had no notice that the authority of the defendant's attorney was disputed. The other case in Salk. turned upon the solvency of the attorney: have you any affidavit denying his solvency.

Watson.—Mr. Crowder appears for the attorney. I contend that the rule must be discharged, on the authority of both the cases in Salk. And the time when the application is made is immaterial, if it appears he came as soon as he had notice; and it does not appear in either of the cases in Salk. but that the defendant applied as soon as he had knowledge of the facts of the case.

Crowder, for Mr. Williams.—I have an affidavit of Mr. Williams, who swears, that he received his instructions from a Mr. Brown, in the country where the female defendant lives, and who informed deponent that he was instructed by the female defendant, and that deponent is agent to Brown, and that the action is brought to recover the amount of a debt due from the wife *dum sola*.

Espinasse, contrà.—The whole of Williams's affidavit is mere hearsay. Why did not Brown make an affidavit: as he had not ventured to do so the probability is it is all false, and the defendant could not be prepared to anticipate in his affidavit this statement of Williams.

Lyndhurst, C. B.—The defendant who makes the application has not given this Court all the information which he might have done. The rule must be discharged; the costs may be costs in the cause.

Rule discharged.—*Williams v. Smith and Wife*, H. T. 1833. Excheq.

NOTES OF THE WEEK.

House of Lords.

PRIVY COUNCIL APPEALS.

This Bill has gone through the Committee.

COURT OF CHANCERY REGULATION.

This Bill waits for the second reading.

INDEMNITY (ARTICLED CLERKS, &c.).

Read a second time, and committed.

SUITS AT COMMON LAW.

Lord Wynford's Bill, on the motion for a second reading, was strongly opposed by Lord Lyndhurst and the Earl of Eldon. The Lord Chancellor afforded it a lukewarm support, and it was negatived, without a division.

LOCAL JURISDICTIONS.

This Bill stood for second reading on Thursday last; but was postponed, on the motion of Lord Lyndhurst, until the Common Law Commissioners have made their report. It is, indeed, most extraordinary that, as the country has been put to the expense of an inquiry into the subject, the Bill should be brought in before the inquiry has terminated, and the Evidence and Report presented to Parliament. Time should be given to examine and consider the effect of the evidence and the opinion of the learned Commissioners.

House of Commons.

ABOLISHING IMPRISONMENT FOR DEBT.

The day has not yet been appointed for bringing in this Bill "*touching* Imprisonment for Debt and the Law of Debtor and Creditor." This is one of the most serious of the measures projected for altering the present system, and will require the best and earliest attention.

LAW AMENDMENT.

This Bill has been read a first time, and stands for the second reading on Tuesday next. It appears by the report of the debate on the Committee in the Lords, that the clause remains in the Bill giving power to the Superior Courts to direct causes of a limited amount—say 20*l.*—to be tried before the Sheriff. Lord Eldon objected to the clause; but according to the Mirror of Parliament, it was agreed to; and we are informed, from other authority, that such was the case. However, the Bill, as amended, will soon be printed in the Commons.

FINES AND RECOVERIES, &c.

These Bills continue before the Select Committee.

GAME.

On the motion for the second reading of this Bill, it was negatived.

LUNATIC COMMISSIONS.

The Committee on this Bill has been deferred till Monday next.

ASSIZES REMOVAL.

A Bill to declare and enact that his Majesty may direct the Assizes to be held in any county in England and Wales, in such place or places, and subject to such regulation as his Majesty, with the advice of his Privy Council, may think fit, has been brought in by the Solicitor General, Mr. Wason, Mr Vivian, and Mr. Ewart, read a first time, and ordered to stand for second reading on Wednesday next.

LANCASHIRE ASSIZES.

The Bill for adjourning the Assizes from Lancaster to Liverpool and Manchester, has been postponed till the 13th of June.

SUFFOLK AND GLAMORGAN ASSIZES.

These Bills wait for the second reading, on the 22d instant; but we presume will stand over until the general measure has been considered.

LETTERS PATENT.

The second reading of this Bill remains appointed for the 22d instant.

CRIMINAL LAW.

Mr. Ewart's Bill for Defining House-breaking and Abolishing Capital Punishment in certain cases, has been deferred till the 13th of June.

JUSTICES OF THE PEACE.

The Committee on this Bill has been deferred.

INDEMNITY (ARTICLED CLERKS, &c.).

This Bill has been read a third time and passed.

NEW KING'S COUNSEL.

Mr. David Pollock, Mr. Maule, Mr. Blackburne, and Mr. Courtenay, have been appointed King's Counsel.

SITTINGS IN THE (EQUITY) EXCHEQUER.

Easter Term.

Saturday - April 20 | Causes.

Thursday - - 25 { Petitions, Motions, Exceptions, Pleas, and Demurrers.

Friday - - 26 | Causes.

Saturday - - 27 { Further Directions, and Causes.

Tuesday - - 30 | Causes.

Thursday - May 2 { Petitions, Motions, Exceptions, &c.

Saturday - - 4 | Causes.

Tuesday - - 7 | Motions and Causes.

ANSWERS TO QUERIES.

Common Law.

ALIEN.—MARRIAGE. P. 388.

In reply to Medii's first question under this head: An alien marrying a woman is not entitled to curtesy. If the husband and wife have issue born alive, and capable of inheriting, and the alien is naturalized, he will be entitled to curtesy, whether the wife had issue *before* or *after* the passing of the act of naturalization. But with respect to denizens, if there be no issue born *after* the denization, the husband will not be entitled to curtesy. Co. Litt. 8, a. 129, a. n. by Harg. And see also 13 G. 3. c. 25. N. W.

Law of Property and Conveyancing.

LEGACY TO WITNESSES. P. 371.

It is perfectly well settled by the cases cited by F., that a legacy to a witness attesting a will of personal estate is *not* void. It is as clear, that by the statute 25 G. 2. c. 6, a legacy to a witness attesting a will of real estate is void; and the difficulty started by C. S. is, whether the statute will apply to a will of both real and personal estate. It appears to me that the difficulty in this case is more apparent than real. A will of real and personal estate comprises two perfectly distinct instruments. As to the real estate, it is a *will*; as to the personal, it is a *testament*. These instruments are authenticated in ways quite distinct; the one requiring to be proved by the evidence of three uninterested witnesses; the other, in ordinary cases, being authenticated by the probate, without the evidence of any witness. It follows, I think, that in the case proposed, the witnesses are entitled to their legacies, provided the personal estate be sufficient to satisfy the debts and legacies of the testator.

J. B.

QUERIES.

Practise.

DECLARING DE BENE ESSE.

Will any of your correspondents inform the profession, whether or not, under the New Rules founded on the Uniformity of Process Act, a plaintiff can declare *de bene esse* on the service of the writ? Or must he wait until the time appointed for the defendant's appearance shall have expired, and then declare in chief?

DELTA.

BOND.

Is there any legal objection to making a bond payable to *A. B.* or bearer, in the same manner as a banker's promissory note?

J. B.

State of Landlord and Tenant.

SUB-LEASE.

A. leased certain premises to *B.*; *B.* granted an underlease, in 1829, to *C.*, at 20*l.* a year less than he paid to *A.*; and *C.* granted a lease shortly afterwards, at a rent larger than the rent paid by *B.* to *A.* *C.* being in want of money, mortgaged the premises, but by what kind of instrument is not known, to *E.*; and *E.*, through his attorney, gave notice, in October 1831, to *A.*, that *E.*, as mortgagee of the premises leased by *B.* to *C.*, had paid the quarter's rent due at the Michaelmas last, to *A.*, and which being 5*l.* more than *C.* was to pay to *B.*, he had to request payment of the 5*l.* From that period until Michaelmas 1832, *E.* has received the rent from the tenant on the premises, paid *A.*, and received every quarter from *B.* the 5*l.* At Michaelmas 1832, *E.* received the rent of the tenant, but did not pay *A.* The tenant left the premises before either *A.* or *B.* could distrain, and *B.* has, in consequence, been obliged to pay *A.* the quarter's rent. The premises being empty, and *C.* being insolvent, has *B.* any, and what remedy, against *E.*, for so much of the rent received by him as amounted to the rent due from *C.* to *B.*? The under-lessee of *C.* assigned the premises, and is also insolvent; and how they came into the possession of the last tenant is not known.

R.

MISCELLANEA.

ORIGIN OF ATTORNEYS AT LAW.

In prosecuting pleas, the parties might attend themselves or by an attorney, called in those days, *responsalis ad lucrandum vel perdendum*, who was appointed in open Court, before the justices sitting on the bench. Glanv. 1. 11.

No attorney could act without an express appointment in Court from the principal; but it was not necessary for the adverse party to be present, nor the attorney himself, provided he was known to the Court. It was not, however, sufficient for one to have been appointed bailiff

or steward in the management of another man's estate, to entitle him to be received as his attorney in Court. He must have a special authority to act for him in that particular cause. This was particularly the case in the Court of Exchequer. Mad. Hist. Excheq. c. 23. s. 5.

At what time the practice of admitting attorneys was introduced, it is not possible to determine. In the time of the Saxons, people prosecuted their own suits in person, unless where one of the parties was a female, or was otherwise disabled from attending. In such cases, as in the suit between Enneawne and her son, some responsible person was permitted to appear for her. This informality was admissible in a small community, where all the parties were known to each other, and the questions of law were simple, and easily to be decided. But when the interests of the contending parties grew more complicated, and judicial proceedings more systematic, the necessity was felt of having the assistance of persons professionally qualified to conduct a suit.

Attorney, in the Latin of the middle ages *attornatus* or *attornatus*, from the French *tourne*, a turn, signified one put in the turn or place of another; and was at first particularly applied in the feudal law to the putting of one lord in the place of another, to receive the homage and service of his tenants. Spelm. Gloss. Du Cange, Gloss. ad. Voc. Attornatus. Attorneys are mentioned by name by Ingulphus, and are particularly spoken of in the Grand Coutumier of Normandy, whence, probably, they found their way to England. At the period we are now treating of, they appear to have gained a settled footing. The introduction of the civil law, where attorneys are called *procuratores*, proctors, contributed, no doubt, to their regular admission into our Common Law Courts.—Crabbe's History of English Law.

THE EDITOR'S LETTER BOX.

. We have been repeatedly urged by our Country Subscribers, to stamp a *part* of our impression for their benefit, and thus enable them to receive our publication by the post, immediately. We might do this, by increasing the charge of that portion of our impression to 10*l.*; and we will do so, if our country friends will inform our publisher whether they would prefer it; but it is obvious that a sufficient number must agree to it, to enable us to meet the additional risk and expense.

We regret that we are obliged to defer the communications of J. C. E.; a Subscriber at Burslem; C. R.; J. S.; a Correspondent on the Fees of Masters in Chancery; A.; Aspiro; C. M. W.; and several "Constant Subscribers," whom we recommend to adopt a more specific denomination.

The Title-page, Table of Contents, and Index to the Fifth Volume, will be published with the Monthly Supplement, on Saturday next.

The Legal Observer.

Vol. V. SATURDAY, APRIL 27, 1833. No. CXXXVII.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

COURT OF CHANCERY REGULATION BILL.

THE new edition of the Chancery Reform Bill, which was announced some time ago, has now made its appearance. Its general scope is briefly as follows :

It abolishes the offices of *Six Clerks*, Sworn Clerks, and Clerks in Waiting ; also the Master of the *Report Office*, the Entering Clerks, and Clerk of the Exceptions, and transfers their business to new officers, called Filacers.

It likewise repeals the 13 Car. 2. st. 1, by which the *Public Office* was established.

Six *Filacers*, six Assistant Filacers, and four Clerks are to be appointed, with whom bills, answers, and other pleadings, petitions of appeal, reports, exceptions, and affidavits are to be filed ; and the Filacers are to *administer oaths*, and keep a common *seal* for writs. They are also to tax costs, except of accounts of receivers, committees, &c.

The present *Registrar Office* is to be remodelled, and six Registrars and a competent number of Clerks appointed. No *recitals* in decrees or orders are to be made.

A *Suitors' Account Office* is to be established, instead of the Account Side of the Report Office, and one Chief and nine other Clerks appointed. Deposits are to be paid to the Accountant General.

The *Masters* in Chancery are to hear certain interlocutory matters, subject to appeal, in certain cases. They are to receive 2000*l.* a year, besides stated fees ; but the suitors are not compellable to take *copies* of

papers. The future appointment of Masters to be by the King's Letters Patent. The future Chief Clerks of the Masters to be Solicitors of five years standing, or junior Clerks in the office for the like term. [The junior Clerk should serve ten years, unless he has been articled to a Solicitor.] The Clerks' fees are fixed, and no *gratuities* to be payable.

The *Examiners* are to be authorized to administer oaths to witnesses.

The Bill contains various provisions relative to the buildings and expenses of business, accounts, &c. And the Lord Chancellor, with the advice of the Master of the Rolls or Vice Chancellor, is empowered to make *General Orders* for regulating the practice of the offices, and generally for simplifying and settling the practice of the Court.

Masters Extraordinary may be appointed in or within any distance of London. [They should be authorized to swear answers and certify them under their hand and official seal, and transmit them to the Filacers' Office to be filed.]

This Bill, it will be observed, differs materially from its predecessor, both in abolishing and creating offices. On the one hand, the Six Clerks are dismissed ; but on the other, the Masters' Court, and examinations *viva voce*, which were elaborately recommended on the former occasion, have disappeared—the Masters being intended, in addition to their usual duties, to sit individually and hear interlocutory matters, in the manner, it would seem, of a Judge at chambers.

It is remarkable that the project of *viva*

voce examination has been abandoned in this Bill, at the very time it is conferred in the Local Jurisdictions Bill. If this novelty cannot safely be introduced in the Metropolitan Courts, where persons of the rank of Masters in Chancery preside, with the best professional aid, surely it is absurd to commence the experiment in a Local Court, with such "appliances and means" as are there likely to be found.

The abolition of expensive recitals in decrees, and of gratuities and office copies, (as we have often observed) will benefit both suitors and practitioners; and the alterations of swearing answers and affidavits where they are to be filed, and witnesses where they are to be examined, and providing a common seal, are all decided improvements, which we hope will be effected.

A BILL INTITULED "AN ACT FOR THE REGULATION OF THE PROCEEDINGS AND PRACTICE IN CERTAIN OFFICES, AND THE SALARIES AND FEES OF CERTAIN OFFICERS OF THE HIGH COURT OF CHANCERY IN ENGLAND."

SIX CLERKS' OFFICE, &c.

1. Whereas by an act passed in the second and third years of the reign of his present Majesty, intituled "An Act to abolish certain Sinecure Offices connected with the Court of Chancery, and to make Provision for the Lord High Chancellor on his Retirement from Office," it was enacted that the offices of the Patentee of the Subpoena Office and the Registrar of Affidavits, amongst others, should cease from and after the twentieth day of August one thousand eight hundred and thirty-three: And whereas it is necessary that provision should be made for the due performance of the duties to such offices belonging; and it is expedient that other offices connected with the said Court should be regulated, and that others should be abolished, and that such of the duties performed in the offices so to be abolished as are necessary to be continued should be transferred to other offices, and that the costs and expenses of proceedings in the said Court should be diminished, and that increased facilities should be afforded for the dispatch of business therein; therefore be it enacted, that the offices of the Six Clerks of the High Court of Chancery, and the offices of the Sworn Clerks and Waiting Clerks in the said Court, and the office of Master of the Report Office, and the offices of Entering Clerks or Entering Registrars of the said Court, and of Clerk of the Exceptions and Agent to the Senior Deputy Registrar of the same Court, shall be and the same are hereby abolished.

2. That the act passed in the thirteenth year of the reign of King Charles the Second, intituled "An Act for ascertaining and establishing the Fees of the Masters in Chancery

in Ordinary," shall be and the same is hereby repealed.

FILACERS.

3. That there shall be six officers to be called "The Filacers of the High Court of Chancery," and that there shall be six Assistants and four Clerks to the said Filacers, and that such Filacers and Assistants and Clerks shall personally do and perform all the business and duties hereinafter directed to be performed by them, in such manner as the Lord Chancellor shall from time to time direct.

4. That the said Filacers and their successors, together with the Three Clerks of the Petty Bag of the High Court of Chancery, and their successors, shall be and they are hereby constituted the Clerks of the Enrolments of the High Court of Chancery, and that the said Filacers and the Three Clerks of the Petty Bag, and their successors, shall have all such and the same powers, and shall perform all such and the same duties, as have heretofore been lawfully exercised and performed by the Clerks of the Enrolment of the High Court of Chancery; and that the said Filacers and their successors shall be and they are hereby constituted the Comptrollers and Supervisors of his Majesty's Hanaper in Chancery, and that the said Filacers and their successors shall have all such powers, and shall perform all such and the same duties, as have hitherto been lawfully exercised and performed by the Comptroller or Supervisor of his Majesty's Hanaper in Chancery; and that the said Filacers shall continue to receive the same fees as have hitherto been paid to the Six Clerks of the said Court in respect of the said respective offices, and that the whole of such fees shall be paid by such Filacers respectively once in every year into the Bank of England, in the name of the Accountant General of the said Court, to be placed to the account hereinafter mentioned, to be entitled "The Chancery Filacers Account."

5. That there shall be an office to be called "The Filacers Office in Chancery," and that all bills, answers, pleas, demurrers, replications, and rejoinders, or such of the said pleadings as shall be continued, and all exceptions to answers, and all petitions of appeal, and other petitions, and all reports and certificates of the Masters in Ordinary of the said Court, and all exceptions to such reports, and all decrees and orders, and all affidavits, and all other pleadings and proceedings in every suit or matter pending in the said Court or before any of the Judges thereof, other than in bankruptcy only, or in lunacy only, being such as have been heretofore filed or registered or entered in any office of the said Court, other than the Master's office and Examiner's office, and the office of the Principal Secretary to the Lord Chancellor, shall be filed and recorded in the said Filacers office; and that decrees and orders of the said Court of Chancery shall no longer be enrolled; and that the four clerks of the said Filacers, under the superintendence and direction of the said Filacers, shall have

the care and custody of all the said proceedings and documents so to be filed and recorded, and shall deliver such copies thereof as may be required, and perform all such other duties relating to such proceedings and documents as the Lord Chancellor, together with the Master of the Rolls and Vice Chancellor, or together with either of them, shall by any general order or orders to be issued by him direct.

6. That the said Filacers shall be and they are hereby authorized to administer the oaths and take the affirmations and attestations of honour which may be required by the practice of the said Court to all answers, pleas, affidavits, examinations, and other proceedings which shall be filed in the said last mentioned office, or be read or used in the said Court, or any of the offices belonging thereto, other than the Examiner's office, and to administer oaths to parties and witnesses to be examined before any of the Masters in Ordinary of the said Court, and that the said Masters in Ordinary shall no longer administer oaths or take affirmations or attestations of honour: And it is hereby declared, that it is and shall and may be lawful for the Lord Chancellor to appoint Masters Extraordinary of the said High Court of Chancery, to administer oaths, and take affirmations and attestations of honour, and to perform all other duties which have hitherto been performed by Masters Extraordinary in the country, or such of those duties as the Lord Chancellor shall direct, within or at any distance from the cities of London and Westminster that he shall think proper, any usage or custom that hath heretofore prevailed to the contrary notwithstanding: Provided always, and be it enacted, that the Lord Chancellor shall, by a general order or orders to be issued by him, specify and point out the circuit or district within which the authority of the said Masters Extraordinary to administer such oaths and perform such duties shall not extend.

7. That hereafter there shall be one Common Seal for the High Court of Chancery, and that the Lord Chancellor shall forthwith cause such Common Seal to be made, and that the said six Filacers and their assistants shall have the care and custody of the said seal; and that all commissions, and all subpoenas, attachments, and other writs, which shall be sued for or issued in any cause or matter depending in the High Court of Chancery or before any of the Judges thereof, shall be sealed with the said Common Seal, and no other, and the same when so sealed shall have the same force, effect, and validity, as the commissions and subpoenas and other writs which have hitherto issued under the Great Seal of Great Britain.

8. That the Lord Chancellor, together with the Master of the Rolls and Vice Chancellor, or with one of them, shall settle the form of the commissions and writs hereafter to be issued in the High Court of Chancery.

9. That no costs which have been heretofore taxed by the Masters in Ordinary of the said Court, other than the costs of approving and appointing and passing the accounts of receiv-

ers, managers, consignees, and committees, shall be taxed by the said Masters in Ordinary; but that all such costs, other than as aforesaid, shall be taxed by the said Filacers and their assistants, or some or one of them, in such manner as the Lord Chancellor shall by a general order or orders to be issued by him for that purpose direct.

10. That the business of the said Filacers Office shall be carried on in the buildings now occupied by the Six Clerks and Sworn Clerks and Waiting Clerks of the said Court, or such part thereof or in such other places as the Lord Chancellor shall direct.

11. That all notices, warrants, orders, and other matters which have heretofore been served on the Sworn Clerks of the said Court shall be served in such manner as the Lord Chancellor, together with the Master of the Rolls and Vice Chancellor, or one of them, shall direct by a general order or general orders to be issued for that purpose; and in case the Lord Chancellor shall direct that such notices, warrants, and orders, or any of them, shall be served in the Filacers Office, the said assistants or clerks of the said Filacers shall superintend the service and delivery thereof, under such regulations as shall be expressed in such general order or orders to be issued as aforesaid.

12. That the several fees specified in the first schedule to this act shall be received by the assistants and clerks to the said Filacers, under such security, orders, and regulations as the Lord High Chancellor shall from time to time by any general order or general orders direct, and that the whole of the fees so to be received by the said assistants and clerks respectively which are specified in the first column of the said last-mentioned schedule shall be accounted for and paid by them and each of them once in every month into the Bank of England, in the name of the Accountant General of the said Court, to an account to be entitled "The Chancery Filacers Account," and that the amount of such fees shall on every payment be verified by the oath of the accounting party, and that such payment into the Bank shall be certified by the said Accountant General to the Lord Chancellor, or as the Lord Chancellor shall by any general order direct; and that the two senior Filacers shall each receive a salary of one thousand pounds per annum, and that the third and fourth Filacers shall each receive a salary of eight hundred pounds per annum, and that the fifth and sixth Filacers shall each receive a salary of six hundred pounds per annum, and that the two senior Assistant Filacers shall each receive a salary of four hundred pounds per annum, and that the third and fourth Assistant Filacers shall each receive a salary of three hundred pounds per annum, and that the fifth and sixth Assistant Filacers shall each receive a salary of two hundred pounds per annum, and that each of the four Clerks to the said Filacers shall receive a salary of four hundred pounds per annum, and that all such salaries shall be paid half-yearly out of the monies standing to the

said last-mentioned account, and be paid by the aforesaid Accountant General, as the Lord Chancellor shall direct by any order to be made by him for that purpose; and that the said Filacers and their assistants shall, over and above their aforesaid salaries, retain or receive for their own use respectively, in such manner as the Lord Chancellor shall direct, the fees specified in the second column of the said last-mentioned schedule.

13. That ——— shall be such six Filacers; and that on the death, resignation, or removal of any of the said Filacers, other than the junior Filacer, the vacancy thereby occasioned shall be filled up by the Filacer next in seniority to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made; and that on the death, resignation, promotion, or removal of the junior Filacer, the vacancy thereby occasioned shall be filled up by the senior Assistant Filacer, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made.

14. That ——— shall be the six Assistant Filacers of the said Court; and that on the death, resignation, promotion, or removal of any of the said Assistant Filacers, other than the junior Assistant Filacer, the vacancy thereby occasioned shall be filled up by the Assistant Filacer next in seniority to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made; and that on all vacancies of the office of junior Assistant Filacer, the Master of the Rolls for the time being shall appoint some person who shall have been called to the Bar, or has been admitted and entered on the Roll of Solicitors of the said Court, and who shall be approved by the Lord Chancellor, to be such junior Assistant Filacer.

15. That ——— shall be such clerks to the said Filacers; and that on all future vacancies in the office of Clerk to the said Filacers, the Master of the Rolls for the time being shall appoint some proper person to be such clerk.

16. That in case it shall hereafter appear to the satisfaction of the Lord Chancellor that the Clerks of the Filacers cannot perform the duties hereby imposed upon them with such dispatch as the suitors of the said Court may reasonably require, it shall be lawful for the Lord Chancellor from time to time to direct that an additional clerk or additional clerks to the said Filacers shall be appointed, but so that the number of the clerks to the said Filacers shall never exceed six, and that such additional clerks shall receive the same yearly salary and payable in like manner as the clerks hereby appointed.

17. That such additional clerks shall be appointed by the Master of the Rolls for the time being, in like manner as the other clerks of the said Filacers.

REGISTRARS.

18. And whereas by an act made and passed in the forty-ninth year of the reign of his late Majesty King George the Third, intituled "An Act for making Provision for such of the Sub-Registrars or Deputy Registrars of the

High Court of Chancery as from Age or Infirmary shall be affected with permanent Disability, and be incapacitated for the due Execution of their Offices, and for making further Provision for the Two Seniors of the said Registrars; for the Clerks in the Registrar's Office, for the Master of the Report Office, and for providing additional Clerks in the Report Office of the said Court, and for making Payments and Regulations in respect of the said Offices," it was, amongst other things, enacted, that out of the interest and dividends of the Government or Parliamentary securities carried to the two several accounts in the said recited act particularly mentioned, intituled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with the Surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and out of the interest and dividends thereafter to be purchased and placed to the said last-mentioned accounts, there should be paid to the Sub or Deputy Registrars of the said Court, and to the eight clerks in the said Registrar's Office, and to each of the two Entering Clerks, and to four additional clerks employed in the Report Office, the several annual sums in the said recited act particularly mentioned; and power was given to the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, to order an annuity not exceeding one thousand one hundred pounds to be paid out of the said two several funds to any Sub or Deputy Registrar who should by permanent infirmity be disabled from exercising his office: And whereas Thomas Alexander Raynsford, Esquire, late one of the said Deputy Registrars, is the Master or Clerk of the Report Office, and he hath been such Master and Deputy Registrar, or a Clerk to such Deputy Registrar, for forty-seven years and upwards; Be it enacted, that from and after the time when this act shall come into operation the said Thomas Alexander Raynsford shall receive an annuity of one thousand one hundred pounds for his life, to be paid out of the same funds and in the same manner as if an annuity had been directed to be paid to him by virtue of the said recited act by reason of his having been disabled from exercising the office of Deputy Registrar, and the Lord Chancellor is hereby required to make an order for the payment of the same accordingly.

19. And whereas it is expedient that the Sub or Deputy Registrars of the said Court should be constituted Registrars of the said Court, and that the fees and emoluments to be received by the said Registrars and by the clerks in the office of the said Registrars should be regulated, and that the business of the suitors of the Court in the office of the Registrars should be facilitated and expedited; therefore be it enacted, that hereafter there shall be six Registrars of the said Court, and that Francis Benjamin Bedwell, James Christ-

mas Fry, and Edward Dod Colville, and Joseph Collis, Esquires, the present four Sub or Deputy Registrars, and John Francis Le Cointe and ———, Esquires, the two present Entering Clerks, shall be such six Registrars; and that on the death, resignation, or removal of any of the six Registrars of the said Court, other than the junior Registrar, the vacancy thereby occasioned shall be filled up by the Registrar next in seniority to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made; and that on the death, resignation, promotion, or removal of the junior Registrar, the vacancy thereby occasioned shall be filled up by the senior clerk in the said office for the time being to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made; and that each of such persons so appointed to be Registrars, and all and every person and persons hereafter to be appointed to be such Registrars, shall be and are hereby authorized and empowered and required personally to do and perform all such matters and things necessary and proper in the due execution of their said offices as belong or appertain thereto, and as have been heretofore done and performed by the Sub or Deputy Registrars of the said Court, excepting so far as the same are or shall be altered or varied by this act, or by any rules or orders to be made or issued by the Lord Chancellor for the time being relative thereto.

20. That the two senior Registrars shall attend the Court of the Lord Chancellor, that the two next in seniority shall attend the Court of the Master of the Rolls, and that the two junior Registrars shall attend the Court of the Vice Chancellor; and that in case of illness, it shall be lawful for any of such Registrars from time to time, as occasion may require, to appoint a Deputy, such Deputy and also the occasion for such appointment to be first approved by the Judge on whom it shall be the duty of such Registrar to attend, upon a petition to be verified by affidavit, for such time and under such general regulations as the Lord Chancellor, together with the Master of the Rolls and Vice Chancellor, or one of them, shall direct; and no such appointment of a Deputy shall continue for any longer time than shall be allowed and specified in and by the order which shall be made by the Judge to whom such petition shall have been presented; provided that in case any Registrar of the said Court who shall be prevented by illness from giving his personal attendance shall omit for the space of two days to appoint such Deputy, the Judge on whom it shall be the duty of such Registrar to attend shall, if he shall see fit, himself appoint such Deputy, and direct what part of the salary and fees of such Registrar shall be received by such Deputy, and the same shall be paid over to and received by him accordingly.

21. That there shall be six Clerks to the Registrars of the said Court, and that ——— Bicknell, ——— Standen, ——— Hussey, ——— Bedwell junior, ——— Munro, and

——— Colville junior, shall be such Clerks; and that on the death, resignation, promotion, or removal of any of them the said Clerks, other than the junior Clerk, the vacancy thereby occasioned shall be filled up by the Clerk next in seniority to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made; and that ——— Fry and ——— Leach shall act as Assistant Clerks to the said Registrars; and that the said ——— Fry and ——— Leach, each in his turn, shall succeed to the office of junior Clerk of the said Registrars as and when vacancies shall occur, unless cause shall be shown to the contrary to the satisfaction of the Lord Chancellor; but no Clerk shall be appointed to supply the place of the said ——— Fry and ——— Leach, or either of them, as such Assistant Clerks.

22. That on all future vacancies of the office of Sixth Clerk to the said Registrars, other than in the cases above provided for, the Lord Chancellor for the time being shall appoint some proper person who has been admitted and entered on the Roll of Solicitors of the said Court, and has practised as such solicitor, to be such Sixth Clerk to the said Registrars; and that the several clerks to the said Registrars so appointed and to be appointed shall and they are hereby required personally to perform all such matters and things as are necessary and proper in the due execution of the business of the said office of the Registrars, and as have been hitherto done and performed by the Clerks of the Sub and Deputy Registrars of the said Court, excepting so far as the same are or shall be varied by this act, or by any rules or orders to be made or issued by the Lord Chancellor for the time being relative thereto.

23. That the several annual sums or yearly payments provided for and directed to be paid to the Sub or Deputy Registrars of the High Court of Chancery for the time being, and their clerks in the same office, and to the Master of the Report Office and his clerks, by the acts of parliament hereinbefore recited, or by any act or acts of parliament whatsoever, shall cease.

REPORT OFFICE AND ACCOUNTS.

24. That the duties heretofore performed by the Master or Clerk of the Report Office, and the clerks in the same office, in regard to filing reports of the Masters in Ordinary of the said Court, and the keeping of the entries of the decrees and orders of the said Court, and the duties of the Entering Registrars or Entering Clerks of the said Court, and the duties of the Clerk of the Exceptions of the said Court, so far as it shall be found necessary or expedient to continue such duties, shall be performed by the said Filacers of the said Court and their assistants and clerks, in such manner and under such rules and regulations as the Lord Chancellor, together with the Master of the Rolls and Vice Chancellor, or one of them, shall by any general rules or orders to be issued by them direct or appoint: Provided nevertheless, and be it enacted, that the Registrars and their

clerks shall have the care and custody of the reports heretofore made and filed, and the care of the books containing the entries of the decrees and orders heretofore made, and of the exceptions to reports heretofore filed, and shall make and deliver all office copies thereof respectively that may hereafter be required under such rules and regulations as the Lord Chancellor shall in manner aforesaid direct; and be it enacted, that any person shall be at liberty to take an office copy of so much only of any such report, decree, or order as he may require.

25. And whereas by an act passed in the twelfth year of the reign of King George the First, intituled "An Act for the better securing the Money and Effects of the Suitors of the High Court of Chancery, and for other Purposes," and by divers orders of the said Court, certain accounts of the effects belonging to the suitors of the said Court have been kept in the Report Office, and certain duties have been performed in the same office in regard to the effects of the suitors of the said Court; and it is expedient that such duties should continue to be performed in the manner heretofore accustomed, excepting as hereinafter is mentioned; Be it further enacted, that in lieu and stead of the said office called the Report Office of the said Court, there shall be an office to be called "The Office for keeping the Duplicate Accounts of the Suitors of the High Court of Chancery," and that the accounts of the effects of the suitors of the said Court heretofore kept in the Report Office shall be transferred to the said office to be called the Office for keeping the Duplicate Accounts of the Suitors of the High Court of Chancery; and that all and every the duties which at the time of the passing of this act were or ought to have been done and performed by the Master or Clerk of the Report Office, or in the said Report Office, in regard to the effects of the suitors of the said Court, shall be done and performed in the said office to be called the Office for keeping the Accounts of the Suitors of the High Court of Chancery, by the Chief Clerk and other clerks in the same office hereinafter appointed, and their successors; and that there shall be one Chief Clerk and nine other clerks of the said last-mentioned office, and that _____ shall be such Chief Clerk, and that _____ shall be such other clerks; and that out of the interest and dividends of the Government or Parliamentary securities aforesaid carried to the two several accounts in the said recited act mentioned, and out of the interest and dividends of any Government or Parliamentary securities hereafter to be purchased and placed to the last-mentioned account, there shall be paid (but subject and without prejudice to the payment of all salaries and sums of money by any act or acts of parliament heretofore passed, not hereby repealed, directed or authorized to be paid thereout,) by the Governor and Company of the Bank of England, by virtue of any order or orders of the High Court of Chancery to be made for that purpose, by half-yearly payments in every year, on the _____ day of

_____ and the _____ day of _____ in each year, the several yearly sums and to the several persons after mentioned; that is to say, to the Chief Clerk in the said office the sum of six hundred pounds, to the Second Clerk the sum of four hundred pounds, to the Third Clerk the sum of three hundred and fifty pounds, to the Fourth Clerk the sum of three hundred pounds, to the Fifth and Sixth Clerks the sum of two hundred pounds each, and to the Seventh, Eighth, Ninth, and Tenth Clerks respectively the sum of one hundred and fifty pounds each; and be it enacted, that the duties of the said clerks shall be performed in a distinct and separate office to be appointed for that purpose by the Lord Chancellor; and that on the death, resignation, promotion, or removal of any of the said ten clerks in the said office, or their successors, other than the junior clerk, the vacancy thereby occasioned shall be filled up by the clerk next in seniority against whom no objection to the satisfaction of the Lord Chancellor shall be made; and that in the event of a vacancy happening by the death, resignation, promotion, or removal of the junior clerk, the Lord Chancellor shall from time to time appoint some proper person to be such junior clerk.

26. That all deposits heretofore directed to be made with the Deputy Registrars of the said Court on filing exceptions to reports, and on rehearings and appeals, and on filing bills of review, or bills in the nature of bills of review, or on any other account, shall be paid by such Registrars, on oath, once in every month into the Bank of England, to the credit of the Accountant General of the said Court, and to be placed to an account to be entitled "The Suitors Deposit Fund," subject to the orders of the said Court; and that the said T. A. Raynsford and the present Deputy Registrars of the said Court, and each of them, shall pay all sums of money now remaining in their or his hands respectively on account of such deposits, the amount to be verified by affidavit, into the Bank of England, to the credit of the said Accountant General, to be placed to the same account.

27. That the several fees specified in the second schedule to this act shall be received by the Clerks to the said Registrars, under such security, orders, and regulations as the Lord High Chancellor shall from time to time direct; and that the whole of the said fees so to be received by the said clerks respectively specified in the first column of the said second schedule shall be accounted for and paid by them and each of them once in every month into the Bank of England, in the name of the Accountant General of the said Court, to an account to be entitled "The Registrars Fund Account," and that the amount of such fees shall on every payment be verified by the oath of the accounting party, and that such payment into the Bank shall be certified by the said Accountant General to the Lord Chancellor, or as the Lord Chancellor shall by any general order to be issued by him direct; and that the two senior Registrars of the said Court shall

receive a salary of ——— per annum, and the two Registrars next in seniority shall receive a salary of ——— per annum, and that the Fifth Registrar shall receive a salary of ——— per annum, and that the junior Registrar shall receive a salary of ——— per annum, and that the two senior Clerks of the said Registrars shall each receive a salary of ——— per annum, and that the Third and Fourth Clerks shall each receive a salary of ——— per annum, and that the Fifth and Sixth Clerks shall each receive a salary of ——— per annum, and that the said ——— Fry and ——— Leach, so long as they shall respectively continue to act as such Assistant Clerks to the said Registrars, shall respectively receive a salary of ——— per annum; and that all such salaries shall be paid half-yearly, on the ——— day of ——— and the ——— day of ——— in each year, out of the monies standing to such last-mentioned account, and shall be paid by the aforesaid Accountant General as the Lord Chancellor shall direct by any general order or orders to be issued by him for that purpose; and that the said several Registrars and the said six Clerks to the said Registrars, over and above the said salaries, shall receive for their own use respectively, in such manner as the Lord Chancellor shall direct, the fees specified in the second column of the said second schedule.

RECITALS.

28. That, unless the Court shall otherwise specially direct, no recitals shall be introduced in any decree or order of the said Court, but the pleadings, petition, notice, report, evidence, affidavits, exhibits, or other matters or documents on which such decrees and orders shall be founded shall merely be referred to; and it shall be lawful for the Lord Chancellor, if he shall think fit, together with the Master of the Rolls and Vice Chancellor, or one of them, to make and issue such rules and regulations as to the form of such decrees and orders as he may deem necessary or proper for the proper drawing up of such decrees and orders, and carrying into effect the provisions of this act in regard thereto.

MASTERS IN CHANCERY.

29. That the Masters in Ordinary of the High Court of Chancery shall hear and determine all applications for time to plead, answer, or demur, and for leave to amend bills, and for enlarging publication, and all such other matters relating to the conduct of suits in the said Court as the Lord Chancellor, with the advice and assistance of the Master of the Rolls and Vice Chancellor, or one of them, shall by any general order or orders direct, in such manner and under such rules and regulations as the Lord Chancellor, by any general order or orders to be issued by him with such advice and assistance as aforesaid, shall direct; and that when any application made to a Master in Ordinary under the authority of this act shall be granted, the order thereon shall be final; but when any such application shall

be wholly or partly refused, it shall be lawful for the party by whom such application shall have been made to appeal by motion from the order made on such application to the Lord Chancellor, Master of the Rolls, or Vice Chancellor, and that the order made on such appeal shall be final and conclusive; and be it enacted, that no such application as above mentioned shall in future be heard by any of the Judges of the said Court of Chancery except on appeal as hereinbefore provided; and be it enacted, that it shall be lawful for the said Masters, on all applications made to them by virtue of this act, to direct that the costs of all or any of the parties shall be costs in the cause or matter, or to award such liquidated sum by way of costs to any of the parties as they shall think reasonable; and the costs so awarded shall be recoverable in like manner as costs directed to be paid by an order of the Court of Chancery.

30. And whereas, by an act passed in the fifth year of the reign of his late Majesty King George the Third, the annual sum of two hundred pounds was directed to be paid to each of the eleven Masters in Ordinary of the High Court of Chancery out of the interest and dividends of the government or parliamentary securities hereinbefore and next hereinafter mentioned; and by an act passed in the forty-sixth year of the reign of his late Majesty King George the Third, the annual sum of four hundred pounds was directed to be paid to each of the said eleven Masters in Ordinary out of the interest and dividends of the same securities, in addition to their respective salaries; be it further enacted, that out of the interest and dividends of the said government or parliamentary securities carried to the said account entitled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and out of the interest and dividends of the government or parliamentary securities carried to the said account entitled "Account of Securities purchased with Surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," in the said recited acts passed in the fifth and forty-sixth years of the reign of his late Majesty King George the Third respectively mentioned, and out of the interest and dividends of any government or parliamentary securities hereafter to be purchased and placed to the last mentioned accounts, there shall be paid (but subject to and without prejudice to the payment of all salaries and other sums of money by any act or acts of parliament, not hereby repealed, directed or authorized to be paid thereout) by the Governor and Company of the Bank of England, by virtue of any order or orders of the High Court of Chancery to be made for that purpose, the annual sum of one thousand four hundred pounds to each and every of the Masters in Ordinary of the said Court for the time being, exclusive of the Accountant General, in addition to the said two several an-

nual sums of two hundred pounds and four hundred pounds, free from all parliamentary taxes and deductions whatsoever; which said annual sum of one thousand four hundred pounds to each of the said Masters, exclusive as aforesaid, shall commence from the ——— day of ———, and shall be paid in the same manner and by the same half-yearly payments as the said two several sums of four hundred pounds and two hundred pounds are directed to be paid.

31. That the appointment of all Masters in Ordinary of the High Court of Chancery shall be vested in his Majesty, his heirs and successors, and that such Master shall be appointed by letters patent under the Great Seal of Great Britain, and shall take the usual oaths before the Lord Chancellor in like manner as such oaths have been heretofore administered.

32. That no person shall be appointed to be *Chief Clerk* of any Master in Ordinary of the said Court unless he shall have been admitted on the roll of solicitors and practised as a solicitor of the said Court for not less than five years, or shall have been a junior clerk in the office of one of the said Masters for a like term of five years.

33. That no person shall be compelled or required to take or pay for any *copy* of any paper or document being in the office of any Master in Ordinary; and that every person shall be at liberty to take a copy of such part only as he may require of any paper or document being in the office of any such Master: Provided always, that in the taxation of costs as between party and party, or as between solicitor and client, no person be allowed the costs of the copy of any paper or document, or of any part of any paper or document, originating in the Master's office, or brought in before a Master, unless such copy shall have been either made in the Master's office, or transcribed from a copy made therein, and taken by the party claiming to be allowed the costs of such second or other copy, or unless such copy shall have been made for the use of any Master or of the Court, or by the desire or for the use of the client or clients of the solicitor claiming to be paid for such copy.

34. That the several *fees* specified in the third schedule to this act shall be received by the chief clerks to the several Masters in Ordinary of the said Court, exclusive of the Accountant General, under such security, orders, and regulations as the Lord High Chancellor shall from time to time direct by any general order or orders to be issued by him; and that the whole of the said fees so to be received by the said clerks respectively specified in the first column of the said third schedule shall be accounted for and paid by them and each of them once in every month to the said Masters respectively; and the whole of the said fees so to be received specified in the second column of the said third schedule shall be retained by the said chief clerks respectively for their own use.

35. That it shall be lawful for the *Copying* or *Writing* Clerks of the said Filacers to re-

ceive and take the sum of one penny per folio, and no more, and for the Copying or Writing Clerks of the said Masters to receive and take the sum of ——— pence per folio, and no more, for every copy of every document or writing or a part of any document or writing made in their respective offices, from the party requiring the same, over and above the fees specified in the said first and third schedules annexed to this act; and that such sum of one penny [and ——— pence] per folio [respectively] shall be retained by the said writing or copying clerks to be employed by the said Filacers and Masters respectively in their respective offices, and that no part thereof shall be received or retained by or applied for the use or benefit of any other person or persons on any pretence whatsoever.

36. Provided, that when any of the officers of the said Court, or of the said clerks in the said offices respectively, other than writing or copying clerks, shall die or shall resign their respective offices, the executors or administrators of the officer or clerk so dying or resigning such office shall be entitled to such proportional part of the salaries and emoluments of such office as shall have accrued during the time that such officer or clerk so dying or resigning shall have executed such office as aforesaid.

37. That if any Master in Ordinary of the High Court of Chancery, or any person holding any office, situation, or employment in the said Filacers office, Registrars office, or the office for keeping the accounts of the suitors of the High Court of Chancery, or Masters offices, shall for any thing done or pretended to be done relating to his office, situation, or employment, or under colour of doing any thing relating to his office, situation, or employment, wilfully take, demand, receive, or accept, or appoint or allow any person whatsoever to take for him or on his account, or for or on account of any person by him named, or in trust for him or for any other person by him named, any fee, gift, *gratuity*, or emolument, or any thing of value, other than what is allowed or directed to be taken by him as aforesaid, the person so offending, when duly convicted, shall forfeit and pay the sum of five hundred pounds, and shall be removed from any office, situation, or employment he may hold in the said Court, and shall be rendered and is hereby rendered incapable for ever thereafter of holding any office, situation, or employment in the said Court, or otherwise serving his Majesty, his heirs or successors; and be it enacted, that any such offender may be prosecuted either by information at the suit of his Majesty's Attorney General, or by criminal information before his Majesty's Court of King's Bench, or by indictment.

38. That each and every of the several officers and clerks in the several offices of the High Court of Chancery and their successors, other than and the clerks employed by such officers as writing or copying clerks or otherwise, shall hold their said offices during their good behaviour, and so long as they shall per-

sonally give their attendance upon their respective duties, and shall conduct themselves honestly and faithfully in the due execution of the duties of their said offices respectively; but in case complaint shall be made to the Lord Chancellor, by petition, of the misconduct or neglect of any of such officers or clerks in regard to the performance of their respective duties, of which notice shall be given to the party against whom such complaint shall be made, and such misconduct or neglect shall be proved to the satisfaction of the Lord Chancellor, it shall be lawful for the Lord Chancellor if he shall think fit, by an order of the said Court, to remove such officer or clerk from his office: Provided nevertheless, that such power of removal shall not extend to the Masters in Ordinary of the said Court.

[To be concluded next week.]

PRACTICAL POINTS OF GENERAL INTEREST.

No. XLIV.

GAME.

By the 2 G. 3, c. 19, §§ 1 & 4, it is enacted, that no person shall kill, sell, buy, or have in his possession any partridge, between the 12th of February and the 1st of September, (altered by the 39 G. 3, c. 34. to the 1st of February and the 1st of September) or any pheasant between the 1st of February and the 1st of October. In an action of debt for penalties under that statute, the first count of the declaration alleged that the defendant, within six months before the commencement of the suit, and between the 1st day of February and the 1st day of September, 1830, (to wit) on the 9th day of February in that year, within that part of the united kingdom called England, to wit at, &c. had in his possession two partridges, contrary to the form of the statute, &c. The second count alleged that the defendant within the same period of six months, and between the said 1st day of February and the 1st day of October in the same year, and within that part &c., to wit at &c., had in his possession one pheasant, the said pheasant not having been taken in the season allowed by the statute in that behalf, nor kept in any mew or breeding place, contrary to the form, &c. At the trial before *Tindal*, C. J., at the York Summer Assizes, 1830, a verdict was found for the plaintiff, subject to the opinion of this Court, on a case, which stated that the partridges and pheasant in the declaration mentioned, were on the 9th day of February in the possession of the defendant, who was at that time, and before the 1st of February, a qualified person, and that they had been killed and in the defendant's possession on or before the 1st of February. Lord *Tenterden*, C. J. thought that this was

not a case within the statute 2 G. 3. c. 19, §§ 1 & 4. "It clearly is not within the object which the legislature had in view; and although it may be within the literal meaning of the words taken by themselves, we must not give to them a construction which will not only be contrary to the general intention of the legislature, but which will lead to this absurd consequence, that a party who might at the last moment of the day, on the 1st of February lawfully kill a partridge or pheasant, would be guilty of an offence by having the same partridge or pheasant in his possession at the earliest moment of the second. And I am strongly inclined to think that the first section applies to living birds only, both on account of the absurdity which would otherwise follow, and because section the second contains an express exception as to living pheasants; and all the objects of the statute are satisfied if the meaning be restrained to living birds only."

Littledale, J. "It is true that the defendant in this case had in his possession partridges and a pheasant, beyond the period specified in the statute, and the words of the act may apply to persons then having in their possession birds killed before the expiration of that time. But the true meaning must be ascertained by looking at the object which the legislature had in view. That undoubtedly was, to prevent the killing or taking of the birds within the periods mentioned, in order that they might breed in the interval. As to *living* birds, it may be said, that the statute applies whether they be taken before or after the 1st of February, because the taking them may prevent their going wild and breeding. With regard to one species of living birds, pheasants, it is expressly provided that the statute shall not extend to them in certain cases. But as to birds killed before the day mentioned, they are clearly not within the intention of the statute, and that being so, the meaning of the words in the enacting clause must be restrained in construction to such birds as are killed subsequently to the period specified. Besides, if a man may lawfully kill birds on the last moment of the day on the 1st of February, it would be absurd to hold that he would be guilty of an unlawful act by having the same birds in his possession on the second." *Simpson v. Unwin*, 3 B & Ad. 134. See also the new Game Act, 1 & 2 W. 4. c. 32. & 3 L. O. 33.

REVIEW.

A Digest of the Law relating to Offences punishable by Indictment, and by Information in the Crown Office, alphabetically arranged; with a Collection of Precedents. By Richard Matthews, of the Middle Temple, Esq. Barrister at Law. London: William Crofts. 1833.

It is observed in the preface to this volume, that for the purpose of speedy and

minute reference, the alphabetical arrangement is preferable to any other ; and in the same proportion as the subject is complicated, or consists of numerous parts, is its superiority over every other mode. The author therefore considers it singular that so many years should have elapsed after the extensive alterations and new modelling of the Criminal Laws, without a single attempt at such an arrangement, in a compendious and portable form.

The alphabetical plan has therefore been adopted ; and the work consists—1st. of the Law, arranged under Titles ; and, 2dly, of Precedents, under corresponding Titles.

“Many of the titles (says the author) will not be found in any other legal work ;—the extensive alterations introduced by the recent statutes rendered new ones necessary ; and in some instances, where from the connection of the subject a further division would not have been desirable, the novelty of uniting several words in one title has been introduced, in order that, as far as possible, every thing comprised under it may come at once under the eye. A more scientific arrangement and choice of titles might certainly have been adopted ; thus, Malicious Injuries to the Person—and Malicious Injuries to Property—would alone have embraced a large proportion of indictable offences ; but it was thought better to incur the charge of an unskilful arrangement (if any think it so), than to sacrifice the paramount object of practical utility.”

Such is the method adopted ; and in following it out in detail, Mr. Matthews observes that—

“Whenever an offence is created by statute, no writer's version, however accurate it may in reality be, ought to be depended upon. The explanation is often longer than the enactment ; and though it may occasionally dart a ray of light upon the mists and shadows with which the unconquerable imperfection of language sometimes envelopes the subject, the meaning will generally be more distinctly perceived and better understood by a careful and minute examination of the words of the statute, than by the most elaborate commentary. When both cannot be secured, no doubt can exist as to which ought to be chosen. It is confidently hoped, therefore, that it will be deemed a feature of no inconsiderable value in the present volume, that the enacting parts of the statutes of most general utility are given in words at length, and occasionally, when rendered necessary, the recital also. A chronological table will be found at the commencement, by means of which any of them may be instantly referred to. Thus, not merely a Digest of the Laws, but also a collection of the enacting parts of all the most useful criminal statutes, in the words of the statutes themselves, will be found in this volume.”

The following explanation, on the subject

of Punishment, it may be necessary to notice :—

“The plan of inserting the statutes, necessarily brought into view, the specific punishment awarded by each clause ; beside which, there are certain general enactments relating to this subject. They are collected under the title ‘PUNISHMENT,’ and referred to throughout the body of the work by a corresponding sign ; but it is feared some confusion has been occasioned by a considerable portion of the work having been printed off before the alterations of the last session. To avoid mistakes, therefore, the reader is requested, in every instance, to turn from the clause containing the specific punishment, to the title ‘PUNISHMENT ;’ by searching which it will be easily and clearly ascertained if any of the general clauses apply.”

We think that Mr. Matthews has ably executed his task, and that the work exhibits great care and labor, and is likely to be generally useful to the profession.

ON THE STAMP DUTIES ACTS. No. XI.

In the case of *Lane v. Wickey*, of Hilary Term, 1829, the then Chief Justice of the Court of Common Pleas—on occasion of some letters being offered in evidence, to which objection was raised because they were not stamped, is reported to have said—according to one reporter, “that the stamp acts were productive of great hardships and injustice, and that he wished they were repealed ;” and according to another reporter, “that he was desirous that all the laws relating to stamps were repealed. In the course of his experience he had known them to work more injustice than any other acts of the legislature.”

Recurring to the cases cited in our previous letters on the subject of Stamps, his lordship's remark cannot be deemed much out of place. Happy will be the day when cause for observations of the kind ceases. Our aim has been impartially to mark the incongruities, and not to point at any man or set of men who may have suggested or fashioned the stamp acts. Persons having the best intentions, at times, fall into error. The necessities of a state sometimes produce grievous laws ; and governments, as well as individuals, become perplexed and incapable of discerning the mischievous tendency of their acts.

It must be admitted that the 55 Geo. 3, c. 184, is an excellent specimen of special pleading, that its style displays much legal ability, and, as regards the collection of duty, that its regulations are suited to the *ad valorem* system. The legal construction of instruments is perhaps too much interfered with ; and thus a latitude is given to the spirit of subtle distinc-

tion. To this source may be attributed a notion of there being (as so called) intricate conveyancing assurances, which appear by the adjudged cases to have arisen more through a corruption of terms than from the *bond fide* nature of the transaction, and just legal definition.

In the scales of duty, there does not appear to have been any principle or basis adopted in their formation; and this may account for their inequality.

We read in the public prints, that some variations, if not a repeal, of the stamp duty system is contemplated. Now, although we do not look for perfection, we do expect it will not, like some former professions on that subject, be a superficial attempt at improvement; and, by inspiring hope at its commencement, and creating disappointment in its conclusion, make severe laws appear more grievous, and thus produce more evil than good.

It may become our office to watch the progress of this proposed measure;—to see that words are not introduced, here and there, merely to screw out an excess of duty, or to charge inadvertence, accident, or undesigned error or omission with penalties so heavy and monstrous as, in value, to equal in some cases that of the property concerned. We know attempts of the kind have had existence, and therefore we do not proceed upon mere chimeras. If amelioration is intended, let it be bestowed in truth and in fact, and not in name.

With respect to Probate and Administration duties, it has ever been inexplicable to us why letters of administration *without a will annexed*, should be charged with higher duty than a probate of a will! because, in the case of taking out administration, a bond, bearing a duty of 1*l.* is indispensable, which operates an additional duty on that kind of transaction, were the *ad valorem* duty the same on both an administration and probate. If reasonable argument is to have any place here, we should say the administration should be the lesser duty, because it frequently occurs that an administration is obtained purely to get in some portion of an insolvent estate, or to enable the widow and fatherless to obtain that which, through the father's anxiety to acquire for his offspring, led to the father's dissolution.

With reference to imposing Probate or Legacy duty on Real Estates (for leasehold estates are now so charged), we venture to observe, that the idea is not quite sustained by equity; because real estates are annually contributing to the exigencies of the realm by means of land tax, county rate, poor rate, militia rate, and other rates and cesses, which do not attach to personal property, consisting of money in possession or in the funds, or the like. Again, if a testator, instead of devising his real estate expressly as such, directs that real estate to be sold, and the produce thereof in money to be paid over, then legacy duty becomes payable in respect of that produce, according to the degree of kindred, be it a child, a parent, or others. This, in our view, is as far as probate or legacy duty should extend.

Let us now advert to the Forgery of Stamps. It is unquestionable that what one man does another can do. This is a strong argument against stamp duty, and a much stronger argument why the validity of a family inheritance should not be made to depend on the genuine quality of a stamp mark or die! The fact was well understood on the first imposition of stamp duty in this country, as evidenced by the ancient acts of parliament. If the whole responsibility is to fall on the individual, however incapable he may be to discern a genuine from a forged die, (and this incapability appears to have been shewn on a recent trial) then we say, the law should be altered; and instead of directing all paper and parchment to be stamped before written upon, the law should be, that no deed or instrument should be stamped until after its execution, and that such should be brought to the Head Office, or to some distributor in the country, within six calendar months after being signed and executed, accompanied with an affidavit testifying the day, month, and year in which the same was signed and executed; and that a receipt for the amount of duty paid should be written in the margin of, and next to the first stamp on the instrument, and signed by an officer of stamps.

Such an arrangement and law would not only be a protection against forgery, but would save much trouble and time to men of business, and the whole expense of the present establishment and machinery for the allowance of spoiled stamps.

It may be objected, that this plan would not suit for bills of exchange and promissory notes. As to such, we say, let them be stamped after the manner in which country bank notes are now stamped. If the present plan is effectual as to country bank notes, surely it will be equally so as regards transactions of a similar kind between private individuals.

The Law of Stamps having become matter of serious consideration, and knowing how its ramifications act upon society, we must be allowed to urge, that every alteration contemplated may meet a grave and solid investigation before being permitted to pass into law.

J. A. H.

Carey Street, 25th March, 1833.

PROPOSED ADJOURNMENT OF LANCASTER ASSIZES TO LIVERPOOL AND MANCHESTER.

WE had intended to afford a full notice of the statement^a relating to this measure;

^a A statement of facts, in support of the petition of the inhabitants of Liverpool and its vicinity, for an adjournment of the Assizes from Lancaster to Liverpool and Manchester.

but as a Bill has been brought in of a general nature, which will enable the Privy Council to appoint proper places from time to time, according to circumstances, for holding assizes throughout the kingdom, we shall confine our attention to the following particulars, which sufficiently establish the propriety of an immediate change being effected in the county of Lancaster.

The town of Lancaster, in which the assizes for the whole county are held, is situated in the hundred of Lonsdale, at the northern extremity of the county; and the towns of Liverpool and Manchester, the one in the hundred of West Derby, and the other in the hundred of Salford, lie at the southern extremity of the county, both at the distance of 54 miles from the town of Lancaster.

The returns of 1831 shew the relative importance of the several hundreds.

Lonsdale, including Ulverston and Lancaster - - - - -	56,726
Amounderness, including Preston - - - - -	69,987
Blackburn, including Colne - - - - -	168,057
Leyland, including Chorley - - - - -	48,338
	<hr/>
	343,108
	<hr/>
West Derby, including Liverpool - - - - -	380,078
Salford, including Manchester - - - - -	612,414
	<hr/>
	992,492

A statement is also made of the assessment for the county-rate, in order to shew the comparative wealth of the several hundreds; and this is followed by a return of the causes entered for trial for the several divisions of the county.

The practice of holding the assizes at a place so distant as Lancaster is from the hundreds of West Derby and Salford, which are the seats of the commerce and manufactures of the county, and supply by far the largest proportion of the civil and criminal business of the assizes, is attended with a burthensome expense to the parties, great hinderance to the administration of justice, and the most grievous inconvenience to jurors and witnesses.

The great expense of a cause arising in one of those hundreds, consists in the costs of witnesses, which frequently constitute one-half of the total expense of the cause. The expense of carrying witnesses from Liverpool or Manchester to Lancaster, and maintaining them there, amounts on an average to at least 7*l.* each witness. The number of witnesses may be fairly estimated at an average of six in each cause, and it is probable that as the amount in dispute is generally small, the costs of witnesses alone exceed the amount of the sum recovered; the expense thus occasioned at a single assizes exceeds all that could be saved by paring down minor expenses in the course of ten years.

Several details are next entered into, in proof of the expense and inconvenience of the present plan. The objections to the proposed altera-

tion are then stated, and, we think, satisfactorily answered.

In confirmation of the statement, the following extract is quoted from the first report of the Common Law Commissioners, which bears the signatures of Mr. Justice James Parke, Mr. Justice Patteson, Mr. Justice Alderson, and Mr. Justice Bosanquet. "The population of Liverpool and West Derby Hundred, which amounts to more than 270,000 inhabitants, and with the hundred of Leyland to more than 300,000; and that of Manchester and Salford, which also amounts to more than the latter number, makes it not only expedient, but just towards those places, that separate assizes should be holden within them."

To the authority of the Common Law Commissioners is added that of Sir James Scarlett, Lord Henley, and Mr. Starkie, the Commissioners appointed "to inquire into the practice of the Court of Common Pleas at Lancaster, and to consider the propriety of removing the assizes from Lancaster." They say, "With respect to the place for holding the assizes in the county of Lancaster, if the choice is to be regulated by a reference to the most central part of the county, Preston, we apprehend, must be selected; if by a reference to wealth and population, the claim would be urged with equal propriety both by Manchester and Liverpool, of which the latter might be thought to have the advantage in respect of the means of accommodation, and the nature of the population." It may be admitted that the holding of the assizes at Preston would be comparatively a saving of expense to the hundreds of West Derby and Salford; but it must be borne in mind, that, that town is at the distance of 32 miles from Liverpool and Manchester, which are about the same distance from each other; so that most of the objections which have been urged against Lancaster, apply to this scheme. To use the words of the commissioners:—"We do not conceive that the adoption of a measure of this kind ought to depend on the result of a mere calculation of loss or gain. It is a matter of important public concern, that provision should be made for the easy and convenient administration of justice; and it is difficult to make any serious comparison between the probable amount of such expense, and the loss and inconvenience to individuals, whether jurors, parties, or witnesses, and the hinderance of justice occasioned by the want of convenient and proximate tribunals, and the consequent necessity of reverting to one remote and inconvenient. The removal of the assizes from Lancaster would certainly be productive of loss to individuals, inhabitants of that town, who now derive profit from the great resort there in the time of the assizes, particularly to publicans. But, however it may be regretted, that a change should be injurious to any class of persons, it is impossible to compare such consequences with the almost intolerable degree of inconvenience now suffered by the county at large."

SUPERIOR COURTS.

Rolls Court.

CONTRACT.—TITLE.—ACCOUNT.

A. having given notice that he could not make out a good title of property contracted to be sold to B., who was let into possession, offers to rescind the contract, and demands back possession. The title being found on enquiry, not marketable, and being still objected to by the defendants, the contract is ordered to be rescinded, possession to be delivered up by the defendants, together with an account of the rents and profits, with costs.

The subject matter of this suit was a contract entered into by the plaintiff several years ago, for the sale of his share of freehold lands to the defendants, who were let into possession at the same time, and continued therein up to the present. They objected to the title which the plaintiff offered, which turned out not to be a marketable one, or such as they had a right to expect; but it was the best the plaintiff could make out, and he offered the defendants to rescind the contract and yield up possession. The defendants refused this offer, and the plaintiff therefore filed his bill, praying that the defendants be ordered to perform the contract specifically, and take such title as plaintiff could make out, or to give him back possession of the premises, and account with him for the rents and profits for the time during which they had held possession. Upon the hearing, a reference was directed to the Master, to enquire whether the plaintiff could make a good title to the property; and the Master reported that he could not. The defendants still refusing to accept the other alternative, the cause now came on upon further directions.

Mr. Pemberton and Mr. Richards, having stated the circumstances of the case for the plaintiff, submitted, that the Court should compel the defendants to accept the title offered, or order the contract to be rescinded, and possession delivered up by the defendants, together with an account, as prayed for.

Mr. Barber, for the defendants, opposed this view of the case. There was no allegation of fraud or misrepresentation against the defendants in this contract, and no ground for the Court to exercise the jurisdiction of rescinding the contract. The remedy by ejectment at law was open to the plaintiff. As to the account prayed for, there was no stipulation respecting that in the contract. The defendants were let into possession by the plaintiff, on the strength of a contract which he now found that he alone was unable to perform.

The Master of the Rolls said this was a case which called for the jurisdiction of the Court. The refusal of possession by the defendants would only lead to vexatious and expensive proceedings at law, which it would be contrary to equity to permit. His order therefore would be, that the contract be rescinded, and that the defendants pay all the costs of the

proceedings incurred, from the time the plaintiff represented to them his inability to make out a good title; and also account for the profits while they had been in adverse possession.

King v. King, at Westminster, April 18, 1833.

Exchequer.

SHAM DEMURRER.—IRREGULARITY.

A Judge at chambers having, in an action of assumpsit, ordered a sham demurrer to be set aside and judgment signed, under which final judgment was signed, without an interlocutory judgment, and the debt and costs levied, the Court set aside that order.

This was an action for 18*l.* 18*s.* 6*d.*, the balance due for goods sold. On the 26th of October a *quo minus* issued against the defendant. On the 4th of November, the defendant's attorney called on the plaintiff's attorney, and offered to give a *cognovit* for debt and costs: this was agreed to. The *cognovit* was given, payable in a month; but the costs were not paid, and a declaration was delivered on the 17th, with notice to plead in eight days: the defendant demurred specially, assigning for cause, that no venue was stated, and also want of form. Application was made to Vaughan, B., and the demurrer appearing to be bad, the learned Judge made an order for quashing the demurrer, and for signing judgment: this order was made on the 3d of December. The defendant had demanded back his *cognovit*; but it was not returned. On the 4th, he ruled the plaintiff to reply. On the 10th, another order was made for quashing the rule to reply, and final judgment was then signed. The defendant gave notice that he should move the Court to set aside the order. On the 12th, the costs were taxed: the defendant's attorney attended and paid the costs under a protest. A rule *nisi* having been obtained by Mansel for setting aside those orders and all subsequent proceedings, and for returning the debt and costs,—

Cowling shewed cause.—[The Court. You abandon the *cognovit* because the costs are not paid, and proceed in the action. Can a Judge at chambers quash a demurrer carrying on the face of it the appearance of falsity? Suppose it is a sham demurrer: the party would have a right to plead.]—He has such a power: this Court could order a demurrer to be quashed, and a Judge at chambers has the same power.—[Bayley, B. That has been a question: it has arisen here before, upon two orders, one of Baron Garroch, and another of Baron Vaughan.]—He referred to *Doe d. Prescott v. Roe*^a, that a Judge has authority to order costs to be paid.

Mansel, *contra*, cited *Reed v. Lee*^b, in which the Court of King's Bench held that a Judge had no such power. Here final judgment has been signed in an action of *assumpsit*, without

^a 9 Bing. 104.

^b 2 B. & A. 415.

an interlocutory judgment, under which we have been compelled to pay their costs.

The *Court* ordered both orders to be set aside. It was agreed that the debt and costs, up to the time of the declaration, should be retained; the plaintiff not to have any subsequent costs, or the costs of the *cognovit*.

Rule absolute.—*Forster and others v. Burton*, H. T. 1833. Excheq.

COSTS.—PLEADING.

Where some defendants demurred to some of the counts of a declaration, and the other defendants went to issue upon them, and all the defendants went to issue upon the other counts, and those defendants who demurred got judgment upon the demurrer before the issues were tried: Held, that they were not entitled to have their costs taxed upon that judgment, under the 8 & 9 W. 3. c. 11.

This was an action for libel. There were ten defendants: three of them demurred to some of the counts, and went to issue upon the rest of the declaration; the other defendants did not demur. The demurrer was argued in this term, and judgment given for the three defendants, who immediately gave notice to the plaintiff that they should proceed to tax their costs on the demurrer.

Mansel obtained a rule *nisi* to set aside the notice of taxation, on the ground that they were not entitled to costs under the 8 & 9 W. 3. c. 11. § 2; and cited *Astley v. Young*^a, recognized in ——— *v. Stanway*^b: he contended, that that act did not apply to actions on the case, and that they were, at all events, premature, until a *nolle prosequi* had been entered.

Hutchinson shewed cause.

The *Court* took time to look into the authorities; and afterwards they made the rule absolute.

Rule absolute.—*Forbes v. Gregory and others*, H. T. 1833. Excheq.

IMMEDIATE EXECUTION.—COSTS.—SUGGESTION.

Where, on a trial in vacation, the Judge orders immediate execution to issue, the defendant is at liberty to apply to the Court in the next Term, to be allowed to enter a suggestion, and to have the costs which he has paid returned.

Erle shewed cause against a rule calling on the plaintiff to show cause why a suggestion should not be entered on the record to deprive the plaintiff of his costs, pursuant to the Court of Requests Act, and why the plaintiff should not refund the costs which had been paid *supra protest*. The cause was tried in the long vacation; and the Judge made an order for immediate execution. He contended that the

application came too late, final judgment having been signed, and the damages and costs paid. The defendant should have gone before the Judge who tried the cause, and obtained an order to stay execution.

Talfourd, Serjeant, *contrà*.

Lyndhurst, C. B.—I am of opinion that the defendant has done every thing he could be reasonably expected to do: to prevent an execution, he pays the money under a protest, and gives notice to the sheriff to keep it, and immediately in Michaelmas Term comes to the Court.

Rule absolute.—*Baddeley v. Oliver*, H. T. 1833. Excheq.

TAXATION.—STAY OF PROCEEDINGS.—BAIL.

Where, in the course of a cause, an order was made for taxing the bill on which the action was brought, and which, by mistake, was drawn up as a stay of proceedings; Held, that the bail could not avail themselves of that order as a giving of time, so as to discharge them.

An agreement between the plaintiff and defendant, that the plaintiff's bill should not be taxed, held not binding upon the bail.

This was an action on an attorney's bill. The defendant had given a bail bond, and an order had been made by *Bayley*, B. that the bill should be taxed. The clerk had drawn up the order as a stay of proceedings. Nothing was done upon the order; and it was then agreed between the plaintiff and defendant that the bill should not be taxed. A rule had been obtained by the bail, calling on the plaintiff to shew cause why the bail bond should not be delivered up to be cancelled; against which the plaintiff shewed cause. The bail are not prejudiced, because the order of Mr. Baron *Bayley* being drawn up, a stay of proceedings was so drawn up by mistake; and as there was no stay, their only mode of getting rid of their liability was by putting in and perfecting bail above, who might have rendered the defendant.

Bayley, B.—No; but the bail are prejudiced by the agreement not to tax; and they are entitled to every opportunity to reduce the amount.

Platt.—The bail are bound by the acts of the principal; and if he does not choose to dispute the amount of his debt, the bail shall not.

Jervis, *contrà*.—The bail are prejudiced by a stay of proceedings.

Bayley, B.—You cannot contend that you can take any advantage of the mistake in drawing up the order.

Jervis.—The bail then are prejudiced, by being unable to tax the bill.

Knowles, on the same side, was commencing to argue that the Judge's order operated as a stay of proceedings.

Bayley, B.—It is quite useless to contend that point.

Knowles.—If the conduct of the parties in the suit is such as to lead the bail to believe

^a 2 Burr. 1233.

^b 5 East, 161.

that they need not put in special bail, they are prejudiced; here the conduct was such as to induce them to act upon such belief. The agreement is a fraud upon the bail. He cited *Clift v. Gye*, 9 B. & C. 422, in which it was held, that where a plaintiff, with the consent of the bail to the sheriff, took a *cognovit*, with a stay of execution for a month, although the bail continued liable (the debt not having been paid) yet the plaintiff could not take proceedings against them without giving them notice that the *cognovit* was unsatisfied.

Bayley, B.—That case is not in point. Bail above are at liberty to render their principal; bail to the sheriff are not. But see *Charlton v. Morris*, 6 Bing. 427.

Per Cur.—The rule must be discharged, but without costs. The bill to be taxed.

Rule discharged without costs.—*Woodsman v. Wood*, H. T. 1833. Excheq.

NOTES OF THE WEEK.

House of Lords.

PRIVY COUNCIL APPEALS.

This Bill has been read a third time and passed.

INDEMNITY (ARTICLED CLERKS).

Read a third time and passed.

LOCAL JURISDICTIONS.

This Bill waits for the second reading, which will be appointed as soon as the Report of the Common Law Commissioners has been received. We are prepared with a long series of "Reasons against the Bill," but defer them for the present.

COURT OF CHANCERY REGULATIONS.

This Bill waits for second reading. We refer to the statement of it in our first article.

House of Commons.

LAW AMENDMENT BILL.

This Bill, with the amendments made in the Committee of the Lords, has just been printed in the Commons. The following are the alterations; to which we add references to the sections of the original Bill, as printed p. 389—405, *ante*.

Sect. 1. *Pleadings*.—The rules, orders,

or regulations as to Pleadings, shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately on the making of the same; and if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule, order, or regulation, shall have effect until six weeks after the same shall have been so laid before both Houses of Parliament.

Sects. 3. & 4. *Actions by Part Owners*.—The clause giving power to part owners of ships to have an action at law against other part owners has been struck out, as well as the following proviso, by which an arbitration might be compelled in such actions.

Sect. 19. *Issues for Small Debts before the Sheriffs*.—The clause is retained giving power for the Court or a Judge, if satisfied that the debt or damages to be recovered shall not exceed *fifty pounds*, and that the trial will not involve any difficult question of law or fact, and such Court or Judge shall think fit so to do, to order the issue to be tried before the Sheriff of the county where the action is brought.

Sect. 28. *Admissibility of Witnesses*.—In the section rendering witnesses interested solely on account of the verdict admissible, the following addition has been made: "Provided that nothing in this act contained shall render any witness admissible for a party who holds any estate under any lease, grant, or other conveyance from such witness."

Sect. 30. — *The allowance of Interest upon debts*, as it stood originally, is qualified, by requiring that "notice shall be given in writing to the debtor that interest will be claimed from the date of the demand until the time of payment."

Sects. 41 & 42. *Arbitration*.—Power is given to the Court, or any Judge thereof, from time to time, to enlarge the time for arbitrators to make their award; and on the application to compel the attendance of a witness, the county where the witness is residing at the time shall be set forth, or the Court or Judge be satisfied that such person cannot be found.

The Bill was read a second time on Wednesday the 24th, and committed for Wednesday the 1st of May.

PAYMENT OF DEBTS OUT OF REAL ESTATE.

The Committee on this Bill has been deferred.

ASSIZES REMOVAL.

This Bill, which will be highly beneficial to the public, has been read a second time, and committed. The effect of the measure may be judged of by the facts stated in regard to Lancashire. *Vide* page 511, *ante*.

ANSWERS TO QUERIES.

Law of Attorneys.

CHARACTER OF A CLERK. P. 419.

An action for damages will lie against such officer, not only by the clerk, but also the proctor; because the one may lose a valuable situation, and the other the services of a clerk. It cannot be in the power of such officer legally to prevent a proctor entering this person as clerk. S. L.

Law of Landlord and Tenant.

RENT.—DISTRESS. P. 436.

H. B. has the power of distress: I think it will not be waived by the verbal agreement entered into between *A.* and *B.*, nor by the new tenancy; because *B.*'s lien on the goods, which were never removed off the premises, evidently still remain as a security for the payment of the rent in arrear; for no verbal promise to pay at a certain time, or to pay interest on the rent, takes away the right vested in a landlord to distress. *Sherry v. Preston*, 2 Chit. 245. Nor even where a tenant gave a note of hand for the amount of rent in arrear which the landlord accepted, and was not paid, the landlord's right of distress was not annulled; for he stands in the same capacity until the rent is absolutely discharged. *Harris v. Shipway*, and *Ewer v. Clifton (Lady)*, Bull. N. P. 182. And if the tenant should fraudulently take the goods off the premises, the landlord may, within thirty days, if not *bona fide* sold, and without notice of the fraud, to another, distress the same, under the stat. 11 G. 2. c. 19. H. A.

ASSIGNMENT OF LEASE. VOL. V. P. 419.

It is my opinion that *H.* and Co. cannot be called on by *C. P.* to pay the arrear of rent due from *E. F.* The covenant by *D.* not to assign without consent, &c. was a personal covenant, and therefore *H.* and Co., as assignees, were not liable to the performance of it (3 Maule & Selwyn 353) unless they were

named in the covenant, which does not appear by your correspondent's query. The lessee could assign without license; but he would render himself liable, on his breach of covenant, for the default of the assignee. It is scarcely possible to answer this query, with any degree of certainty, without ascertaining more fully the form of the covenant and of the consent to *D.* A. B.

Law of Property and Conveyancing.

LEGACY.—NOTES. P. 484.

Bills of exchange and promissory notes, being *choses in action*, and merely securities for a debt or debts, are not to be considered as goods and chattels, and therefore would not pass by a bequest of all the testator's "property" in a particular house. 11 Ves. 662. But bank notes will pass by such a bequest, they being *quasi cash*. *Fleming v. Brook*, 1 Scho. & Lefr. 318—19. 11 Ves. 662.

W. D.

Common Law.

PROMISSORY NOTES. P. 484.

It has been held, and there are numerous authorities on the point, that with respect to promissory notes payable on demand, the Statute of Limitations runs from the *date* of the note, and not from the *time* of the demand. See Cro. Eliz. 548; 2 Salk. 227; Sir William Jones, 194. There is, however, controversy on the subject. See 3 Campb. 459.

W. D.

THE EDITOR'S LETTER BOX.

We have received several communications on the proposal to stamp a part of our impression for the country, but must wait until the present Monthly Part has reached our Subscribers.

We thank C. S. for his Tract, and will avail ourselves of it as soon as practicable.

The communication from Liverpool, of a substitute for the General Registry scheme, we hope to notice in the next number.

The communications which we acknowledged last week, as well as others since received from F; "Attornatus;" A. E. I.; S.; "An Assignee;" W. D.; "An Old Subscriber;" J. C.; and T. B.; are unavoidably deferred, as well as several reports of cases during the present Term.

The Quarterly Digest of all reported cases, being Part II. of the Third Volume of the Analytical Digest, will be published on the Third Saturday in May.

The Legal Observer.

VOL. V. SUPPLEMENT FOR APRIL, No. CXXXVIII. 1833.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE SOLICITOR GENERAL'S BILLS. No. IV.

CURTESY^a.

THE alterations proposed in the Law of Curtesy are necessarily few, as there is little in that part of our law which calls for amendment. Of those which are recommended, we approve. They chiefly affect two of the present requisites to create the estate; 1st. The seisin of the husband; and, 2d. The birth of issue of the marriage.

1. With respect to the seisin of the husband; by the present law it is requisite, in order that curtesy should attach, that the husband should obtain seisin, in fact, during the coverture, although the possession of a tenement for years would give him seisin. This rule, of course, only applies to such hereditaments as admit of a seisin in fact. By the present bill it is proposed to alter this rule, and to enact that when a husband and his wife, in her right, shall have been entitled to a right of entry in any tenements or hereditaments, and her husband would have been entitled to an estate therein, or tenant by the curtesy, if they or he had recovered possession, he shall be entitled although such possession shall not have been recovered.

2. By the present law, it is necessary to constitute a tenancy by the curtesy, that issue capable of inheriting to the lands should be born. It is intended, however, to alter this rule, and to enact that husbands shall be tenants by the curtesy although no issue be born.

^a See an analysis of this bill, 2 L. O. 310. And see the propositions of the Real Property Commissioners on this subject, 2 M. R. 365.

The bill further provides, that a husband whose wife shall die, leaving issue by any former husband living at the time of her decease, shall not be entitled to an estate as tenant by the curtesy in the entirety of any hereditaments which such issue shall be entitled to inherit, but only to one moiety of the same; and the other moiety shall descend, immediately after the decease of the wife, to her heir or issue entitled thereto.

The act, when passed, is not to extend to hereditaments subject to gavelkind, or borough english, or copyhold, or customary lands, or to any hereditaments of any wife who shall die before the 1st day of January 1834.

PLEASANTRIES OF THE LAW. No. VIII.

THERE are some things personal, and so inseparably connected to a man's person, that he cannot do them by another; as the doing of homage fealty. So it is holden, that a lord may beat his villein, for cause or without cause, and the villein is without remedy; but if the lord command another to beat him without cause, who does accordingly, the villein shall have an action of battery against him. So if the lord distrain his tenant's cattle, when nothing is behind, yet the tenant, for the reverence and duty that appertains to the lord, shall not have trespass *vi et armis* against him; but if the lord command his bailiff or servant to distrain, *secus*. *Comb's case*, 9 Co. 76 a.

Justice *Dodridge* says, It has been wittily observed, that all words which end in 'ment' shall be taken and expounded according to the intent; as parliament, testament, arbitrament, &c. Latch, 41, 42.

It has been held that Sain John and Saint John are several names: so are Elizabeth and Isabel; so Margaret, Marget, and Margerie; so Gillian and Julian; so Agneis and Anne; so cousin and cozen; so Edmund and Edward; so Randulphus and Randal; so Randulphus and Randolphus; and so Randolph and Ranulph. See Anderson, 211, 212. 2 Cro. 425, 558. 2 Roll. 135. So also Miles and Mils are not one name. Stiles, 389. But Piers and Peter are one name. 2 Cro. 425. So Saunder and Alexander; so Garret, Gerard, and Gerald. 2 Roll. 135. So Joan and Jean. 2 Cro. 425. So Jacob and Jaacob. Mod. Rep. 107. 3 Keb. 284. And James and Jacob are several names; yet Jacobus is Latin for both, and will serve for either of them. 2 Roll. 136.

Cooper brought an action upon the case against Witham and his wife, for that the wife maliciously intending to marry him, did often affirm that she was sole and unmarried, and importuned *et strenue requisivit* the plaintiff to marry her; to which affirmation he gave credit, and married her, when *in facto* she was wife to the defendant; so that the plaintiff was much troubled in mind, and put to great charges, and much damnified in his reputation. He had a verdict, but no judgment; for by *Twisdén*, J. the action lies not, because the thing here done is felony: no more than if a servant be killed, the master cannot have an action *per quod servitium amisit, quod curia concessit*. 1 Sider. 375.

One Carey brought an action of trespass *quare vi et armis* against Stevens, for casting wine upon his velvet doublet; and well brought, though he might have had an action on the case. Noy, 48.

In Fox's Book of Martyrs, there is a story of one Greenwood, who lived in Suffolk, that he had perjured himself before the Bishop of Norwich, in testifying against a martyr who was burned in Queen Mary's time; and had therefore afterwards, by the judgment of God, his bowels rotted in him, and so died. But it seems this story was utterly false of Greenwood, who after the printing of the Book of Martyrs was living

in the same parish. It happened after, that one Booth, a parson, was presented to the living of that parish where this Greenwood dwelt; and some time after, in one of his sermons, happened to inveigh severely against the sin of perjury, and cited the passage out of Fox, that Greenwood was a perjured person, and was killed by the hand of God: whereas in truth he was present at the sermon; and therefore brought an action on the case for calling him a perjured person; and the defendant pleaded *not guilty*; and *Wray*, C. J. laid it down, that being delivered but as a story, and not with any malice or intention to slander any, he was not guilty of the words maliciously. 2 Cro. 91. 1 Roll. 87.

John Walter, Knight, Lord Chief Baron, a profound learned man, and of great integrity and courage, being Lord Chief Baron by patent *Primo Caroli quamdiu se bene gesserit*, fell into the King's displeasure, and being commanded to forbear the exercising of his judicial place in Court, never did exercise it from the beginning of Michaelmas Term quinti Caroli, until he died, viz. the 18th of November 1630. But because he had that office *quamdiu se bene gesserit*, he would not leave his place, nor surrender his patent without a *scire facias* to shew what cause there was to determine or forfeit it, so that he continued Chief Baron until the day of his death. Cro. Car. 203.

Jacob Hale, the famous rope-dancer, had erected a stage in Lincoln's Inn Fields; but upon petition of the inhabitants, there was an inhibition from Whitehall. And upon complaint to the Judges that he had erected one at Charing Cross, he was sent for into Court, and the Chief Justice told him he understood it was a nuisance to the parish; and some of the inhabitants being in Court, said it occasioned broils and fightings, and drew so many rogues to that place that they lost things out of their shops every afternoon. Hales said, that in 8 Car. 1, Noy prayed a writ to prohibit a bowling-alley erected near St. Dunstan's Church, and had it. Mod. Rep. 76; and see 2 Keb. 846.

One Cox was confined *ad curiam visus, Franc. plegii et baronis*, because he put on his hat in the presence and in contempt of the Court of the Lord, and said, "he cared not what he could do," and hindered the business of the Court *inciviliter se gerens*. 1 Keb. 451 and 465.

PARLIAMENTARY REPORT.

CRIMINAL LAWS.

[Concluded from p. 443.]

The Solicitor-General.—The petitioners seem to forget all the exertions which have been made of late years to mitigate the rigour of the criminal code, and the many instances in which capital punishments have been abolished. Even in the last Session of Parliament, acts were passed for the purpose of removing the penalty of death for a number of offences: for instance, cattle and horse stealing, stealing in a dwelling-house, forgery, and coining (which last was formerly punished as high treason). I have attended much to this subject; and I admit that it is a matter of grave consideration, whether the punishment of death might not be abolished in all cases of robbery unattended with personal violence. At the same time, however, it is necessary to proceed with caution in this career. The Honorable Member for Middlesex said, that he would abolish the punishment of death in all cases except those of murder, arson, or treason. Now, in all cases of highway robbery and burglary, a man may be deprived of his property in consequence of threats of violence. With reference to such cases, I think the Honorable Member carries his principles a little too far. I would put it to him whether, if he were attacked on the highway by a robber, and threatened with violence, he would hesitate to draw a pistol, and shoot his assailant, in defence of his life and property? If, then, he would allow a private citizen, in such a case, to take away life, why should he not allow the state, for the general good and security of all citizens, to take the same course? I think it would require great consideration before we abolished the punishment of death for robbery accompanied with violence. I wish, however, to be distinctly understood, that I am not opposed to a mitigation of the criminal law; on the contrary, I think that there are several parts of the code which require amendment; but I am desirous that such improvements should be effected by cautious and gradual means alone. With reference to the petition before the House, I must observe, that any one might reasonably suppose that it had been drawn up by persons who have been asleep for the last ten years, and are, consequently, ignorant of the important changes and great ameliorations which have taken place within that period in the criminal law.

rations which have taken place within that period in the criminal law.

Mr. T. B. Lennard.—I can assure the House, that the petitioners did not forget the conduct of government with reference to those ameliorations effected in the criminal law last year—to which the learned Solicitor-General has just alluded. On the contrary, at the meeting at which this petition was adopted, justice was done to the exertions of ministers, and such of their measures as had gone to mitigate the severity of the criminal code were dwelt on with much satisfaction. With respect to the present petition, it is only one out of the thousand proofs which will be given to Parliament, of the growing feeling of the country on the subject, and of the daily increasing disapprobation of the people, of the severity of our criminal code. My honorable and learned friend the Solicitor General has truly stated indeed, that during the last few years the punishments for crime have been much mitigated. But there are still several criminal laws on the statute book, which are a disgrace to the country. The honorable and learned gentleman did not contend that robbery unattended with violence should be punished with death; but in many instances this is still a capital offence.

The Solicitor General.—This too was altered by the act of last year.

Mr. T. B. Lennard.—I still think that I am right; but, at any rate, no crime against property, unaccompanied by violence to the person, should, in my opinion, be punished with death. This was the strongly expressed, and general feeling of the very large meeting from which this petition emanated. I am aware that the great impediment in the way of the amelioration of the criminal law arises from the want of a good system of *secondary punishments* in this country. The truth is, that until recently, but little attention was paid to this most important subject. I do not blame the present government for not having hitherto taken up this subject in its full extent, as I am aware how much their attention has been engaged with other matters; but I do trust that ere long it will be taken up by them. I am satisfied that the adoption of a good system of secondary punishments will do much to prevent the commission of crime. This plan has been tried with the greatest success in the United States, and it would be well for us to imitate them in this experiment. At present, the utmost difficulty is experienced in bringing criminals to justice, in consequence of the extreme severity of the law.

Thus individuals who have been robbed are unwilling to prosecute, and juries will often not convict those who have undoubtedly committed the crimes for which they are tried.

Mr. Robinson.—I have been requested by many of my constituents to support the prayer of this petition, which I do most cordially, as it is in perfect accordance with my own feelings. I agree with the Honorable Members for Middlesex and Durham, that the certainty of the infliction of a minor punishment would be much more effectual for the repression of crime, than the uncertainty, in many cases, at present attending the infliction of the sanguinary penalty of death. Experience warrants us in saying, that the relaxation of the criminal code would tend to diminish crime. This is peculiarly the case as regards America. I would then ask the Legislature, with this example before our eyes, whether it is not a reflection upon our character to let any further time pass over without taking the general subject up in a proper manner? I hope that my Honorable Friend who last year brought forward a bill for the relaxation of several parts of our criminal code, and who succeeded in carrying it into effect, will again take the matter in hand, and introduce, without delay, some further measure. I know that a general feeling pervades all classes, that our criminal code should be still further mitigated; and I know too, that this House will be strongly urged to adopt measures for that purpose without delay.

Mr. George Lamb.—I am happy in being able to inform my Honorable Friend the Member for Maldon (Mr. Lennard), that the subjects of *prison discipline and secondary punishments* have been for some time under the serious attention of his Majesty's Government. Nothing, however, has yet been done to carry this object into effect, as it is desirable in the first place to receive the report of a gentleman who has been sent to the United States to investigate the condition of the prisons and penitentiaries there; and to enquire, by personal application, how far the system of secondary punishments adopted in that country has been successful. When we obtain full and detailed information on this subject, it will be a matter of consideration as to the best mode of trying the experiment in this country. For my own part, I do not think that it will be necessary to try the experiment on a very large scale; but I consider that the Penitentiary at Milbank will afford an ample opportunity of making it on the American plan, if it should be thought advisable so to

do. I am satisfied that it would be unnecessary to erect a new prison for this purpose, as there is a great number of unoccupied cells in the Penitentiary, and therefore the trial could be made without much expense. I should be the last person in the world to throw cold water upon the efforts of the petitioners; but however far my feelings might carry me in expressing my concurrence in the general prayer of the petitioners, I still think that the subject of it is one upon which the House should legislate with the greatest caution. I apprehend that it would be better, instead of abolishing the punishment of death by a general law, to treat *each crime separately*, and to see what effect is produced in each particular instance by the relaxation of the extreme penalty of the law. I am satisfied that it is by gradual and cautious legislation that we can best qualify the severity of our code, without endangering the security of life and property. I can assure the House that I have received, in my official capacity as Under Secretary of State for the Home Department, several remonstrances against that mitigation of punishment which was effected last year. I believe, for my own part, that the alterations which were then made in our criminal code have produced a beneficial effect, and I mention the circumstance which I have just stated only for the purpose of impressing on the House the propriety of dealing with this question with moderation. At the same time I am ready to declare that we ought not to stop in our course of improvement on the criminal code until we can fairly say that the penalty of death is attached to no crime which does not deserve that punishment. It is certainly extremely difficult to define, in offences against property, the degree of crime which shall be held to deserve the punishment of death; but at the same time I wish to remind the House, that it is the duty of the Secretary of State to investigate each case, and to mitigate the punishment wherever he can with propriety do so.

The Honorable Member for Middlesex has alluded to certain crimes which are now punishable with death, and he stated that capital punishment should be inflicted in cases of murder, arson, and treason only. I am not prepared to go so far as the Honorable Member; and although there are many cases in which I think the punishment of death might be mitigated, there are others in which it would be most inexpedient to do so. For instance, all acts of burglary, which are likely to lead to murder, are, in my opi-

nion, crimes which deserve to be visited with the extreme penalty of the law. Nothing, as I think, can be more serious than the violation of a private dwelling in the middle of the night, when, if resistance be made by the inhabitants, violence is resorted to. In such a case I think that the capital punishment must be inflicted, although there are distinctions in burglary, and I do not desire, for that reason, that the capital punishment should be inflicted for all offences of this nature. With respect to the sentence of transportation for life, which is now in many cases passed instead of the sentence of death, I am of opinion that it is one which should always take effect, unless in the event of some decidedly mitigatory circumstances arising after sentence. I trust, however, that we shall soon have a good system of secondary punishments, which, of course, will very much aid us in the mitigation of the severity of the law. I hope that criminals will be punished in such a way as to deter others from the commission of crime; and if this be done, I have no doubt but that in many cases—unless where vice be too deeply rooted in them—criminals will be reformed.

Mr. *Charles Wynn*.—I agree with the Honorable Under Secretary of State, that the crime of burglary deserves the severest punishment which the law inflicts. This is a crime of the most serious nature; and perpetrated as it is, for the most part, at the dead of night, it is not only calculated to excite the greatest terror, but also to lead to murder, and more especially in cases where resistance is offered. I am not, however, opposed to any mitigation of the criminal code, as it stands at present:—on the contrary, I think that there are many cases in which a milder punishment might be safely substituted for that of death. There are even cases which now come under the class of burglaries, that ought not to be visited with extreme severity. For instance, a person merely lifting a latch of a door, and entering an outbuilding and stealing above a certain amount, is guilty of burglary. But it is most desirable that there should be a classification of crimes, and that definite distinctions should be drawn. I agree also with the Honorable Under Secretary, that nothing but very strong mitigatory circumstances should ever induce the Home Office to commute for a milder punishment the sentence of transportation for life, now attached to offences formerly punishable by death. It is well known that there are sheep-walks in Wales, extending

several miles, and the sheep are not very carefully guarded. Now I, as a magistrate, have had cases of this nature repeatedly brought before me. A peasant, from distress, has stolen a sheep from the flocks, with the view of providing food for his family. Now, surely there are mitigatory circumstances in this case, in comparison with that of a man who steals the whole flock of sheep for the purpose of selling them. I think then, that as well as in burglaries, there should be a classification of offences as regards cattle and horse stealing. I will only add, that in alterations of this sort it is necessary to proceed with the greatest caution.

Mr. *Buckingham*.—I cannot admit the analogy between the cases of a man shooting a robber in his own defence, and of the state taking away the life of an offender against its laws. The individual, at the time, is under the influence of fear for his own life; but the laws, as a tribunal, should not be influenced by fear. The object of punishing a criminal appears to me to be, to prevent a recurrence of the crime, both on the part of the criminal and of others, and to get out of the individual, as far as it possibly can be done, restitution to the state. Of course, when a crime is punished with death, no restitution can be made to the state; but this is not so as regards other punishments. For my own part, I am prepared to go further than the Honorable Member for Middlesex, and as far as the Honorable Member for Durham, and to contend that no crime should be punished with death, because by death neither restitution nor reform can be effected. Another great objection to this kind of punishment is, that it is irreparable, however innocent the unfortunate sufferer may appear to be on future investigation. As to the questions of the moral responsibility of man to his Maker, and the right of society to deprive one of its members of life, I will not go into them at present; but on the consideration of this subject, they should not be overlooked.

Mr. *R. C. Fergusson*.—I think that there are certain crimes to which society, in justice to itself, and even for its own preservation, are bound to affix the penalty of death. I am satisfied, that if the notion of the Honorable Member for Sheffield were acted upon, it would lead to the utter destruction of society. Society has an undoubted right to deprive one of its members of his life, for the protection of the rest of the community. In many cases, I am convinced that the se-

curity of life and property depends upon the terror of capital punishment. With respect to the petition, I most cordially concur in the prayer of it; for I think that a further mitigation should be made in our criminal code, which is undoubtedly the most sanguinary in Europe.

I agree with the Honorable Member for Malden, that many crimes are called burglaries which ought not to be included within that class of offences. On this ground, therefore, I think it most advisable that there should be a more accurate definition than exists at present, of the crime of burglary. I agree also with my honorable friend, in thinking that the penalty of death ought not to be attached to crimes which are not attended by violence, or acts exciting bodily terror. With reference to the act passed last Session for an amelioration of our criminal code, and for which every credit is due to my friend the Member for Liverpool (Mr. Ewart), who, I trust, will bring forward other useful measures of a similar nature, it must be remembered that it only abolishes the punishment of death for larcenies. The mere act of breaking into a dwelling-house in the open day, and stealing therefrom, is still a capital felony. If a man forces a latch and commits a robbery, he is still liable to the extreme sentence of the law. This is called a "burglary," and it only shews the necessity of having a better definition or classification of crimes. I confess that I should hesitate before I consented to abolish the capital punishment in the case of breaking into a dwelling-house at the dead of the night, and being armed to resist the inmates. I am of opinion that the general inquiry should be instituted into the nature and extent of our system of punishments, with a view to the adoption of a more rational system of secondary punishments than we have at present. I repeat, that I cordially concur in the prayer of the petition; and that, as we surpass other nations in civilization, so I heartily wish that our criminal laws may be better adapted to such a state of things, and that we may no longer be obnoxious, as we at present are, to the charge of having more sanguinary laws than any other European nation.

The Attorney General.—I rise, lest my silence should be misunderstood. I will yield to no Honorable Gentleman in this House in my desire to mitigate the severity of the criminal code. I believe that there are many cases with respect to which a milder punishment than is now applied ought to be inflicted; but I agree with my honorable friend

the Under Secretary for the Home Department, that the most judicious course to pursue with regard to any future relaxation that may be deemed necessary, would be, to deal with the cases separately and in detail, instead of by a general enactment. In legislating on this subject, it will be necessary to exercise the greatest care, and not to lose sight of the general principles we have hitherto acted upon. It is desirable that we should rather proceed on practical grounds than on any mere theoretic notions.

Mr. Rotch.—I expect very little will be done towards the prevention of crime, until the recommendations of different Committees of this House respecting prison discipline be carried into effect. I am sorry to say that those recommendations are very generally neglected throughout the country; and here I will call the attention of the House to the concluding sentences of the petition:—"That your Honorable House will introduce such a thorough and efficient reform of the Criminal Law as will render it more auxiliary to public morals than to private vengeance, and by a judicious system of prison discipline, afford that protection to property, of which all persons may avail themselves, without purchasing it by the sacrifice of human life."

I regret that so little attention has been hitherto devoted to this subject in any of our prisons, and that regulations, which the law directs, are seldom or never attended to. The law is violated in this respect almost under the eyes of the House of Commons. I allude particularly to the state of the Prison of Newgate, in the city of London, which is really a disgrace to the country. I can speak with certainty on this subject, as I am one of the visiting magistrates. Several attempts have been made to classify the prisoners; but the confined state of the prison renders such a classification impossible. There are at present 1200 prisoners within the small space of that prison. Although the city of London recently had the opportunity of enlarging Newgate, by the purchase of some extensive premises adjacent to it, they refused to do so; and thus all hopes of a classification, for a time, are at an end. I trust that the government will take up the subject, and bring forward some measure relative to secondary punishments and prison discipline, and, at the same time, to take proper care to enforce the latter in all cases.

Mr. Ewart.—I most cordially concur in the prayer of this petition, and I have no doubt that this will be followed up by many

other petitions of a similar character. I was much gratified at hearing that Government had sent out a gentleman to America to examine into the state of prison discipline in that country. I have reason to believe that the system which is now generally acted upon in the prisons of Philadelphia, New York, and the New England States, has led to the most beneficial results. I trust that this Session will not pass over without some further relaxation of our criminal code being effected. I am quite at a loss to understand the policy which can justify laws of such severity. And here I cannot help referring to one most fertile source of crime—namely, the *Game Laws*. I find that during the last nine months, no less than between 3000 and 4000 persons have been arrested for infractions of those laws. I think that it would be infinitely better that every head of game in the country should be destroyed, than that such disastrous effects should be produced by maintaining any part of these pernicious laws. I would also direct the attention of the House to the clause in the *Anatomy Bill* of last year, by which it is directed that the bodies of murderers should be hung in chains. In my opinion this clause should at once be got rid of; as it is really an insult and a disgrace to the country.

SHERIFFS' COURT, LONDON.

The following gentlemen have been appointed by the Common Council to take affidavits of debt and of process, and issue the different writs, who will act either at the Public Office in White Cross Street, or at their respective offices.

John Gould, 1, Great St. Helena, Bishopsgate Street.

Richard Gude, 89, Lombard Street.

— Bruce, 1, Trump Street, King Street, Cheapside.

Attorneys admitted, Tuesday 26th March, 1833.

David William Wire, 30, St. Swithin's Lane.

Thomas Lott, 43, Bow Lane.

M. B. Miller, 15, Clifford's Inn.

Thomas Gole, 53, Lothbury.

M. E. Wilkinson, 10, Broad Street Buildings.

John Curtis, 3, Charlotte Row, Mansion House.

BANKRUPTCIES SUPERSEDED.

From Mar. 22, to Apr. 19, 1833, both inclusive.

Byers, Geo., Pall Mall, Hatter.
Hudson, Jos., Oxford Street, St. Marylebone, Tobacconist.
Mehir, John, jun., Leigh, Warwick, Baker.
Hodson, Edward, Tottenham, Northampton, Linen Draper.
Lapton, James, and John Hudson, Wakefield, York, Commission Wool Agents.
Smith, Wm., Billingsgate, Angel Alley, Sun Street, Bishopsgate Street, Lamb's Court, Spitalfields, Victoria Cottage, South Lambeth; Hampton Wick, Middlessex; and Thomas Ditton, Surrey, Fishmonger.

BANKRUPTS.

From Mar. 22, to April 19, 1833, both inclusive.

Asbury, John, Moor House, Ecclestone, and Samuel Darlson, Stone, Stafford, Brewern, Darlson, Stone; Barber, Fetter Lane.
Attree, John, Brighton, Grocer. Green, Off. Ass.; Wire, St. Swithin's Lane.
Armistage, Wm., Sowerby Bridge, Halifax, York, Victualler, &c. Jagers & Co., Coleman Street; Holroyde, Halifax.
Buckle, Cherry, Barnard Castle, Durham, Grocer. Tye, Beaufort Buildings, Strand. Richardson, Barnard Castle.
Darrington, Wm., Sandbarth Heath, near Sandbach, Cheshire, Silk Throwster. Barts, Ashton-under-Lyne; Fox, Finsbury Circus.
Booth, Ann, Bury, Lancaster, Shopkeeper. Woodcock, jun. Bury; Appleby & Charnock, Gray's Inn.
Bourchier, Edw. May, and Samuel Benson, Oxford Street, Tallow Chandlers. Whittington, Dean Street, Finsbury Square.
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INDEX TO VOLUME V.

Actions at Law, 325.
Administration, 286.
Advocates before a Magistrate, 184.
Agreements, 316, 348, 413.
Affidavits, 240, 304, 305, 370.
Alien, marriage, 499.
Anatomy Act, 37.
Anecdotes, *passim*.
Annuity to Medical Man, 2.
Answers to Queries, *passim*.
Anticipation, 491.
Antiquities, legal, *passim*.
Ambassador, 159.
Arbitration, 242.
Aristotle in India, 292.
Arrest, 16, 241, 416.
Articled clerks, 146, 153, 161.
Assignees, provisional, 300.
Assignment, 516.
Assizes removal, 511, 516.
Atkinson's Marketable Titles, 152.
Attorneys, certificate, 333, 349, 430.
 partnership, 385.
 re-admission, 195, 210, 369.
 lost deeds, 16.
 lien, 63, 144.
 examination of, 222, 283.
 admission fees, 204, 415, 449.
 law of, 79, 241, 246, 270, 323, 329, 429.
 liability of, 158.
 pretended, 154, 203.
 education of, 203, 314.
 undertaking of, 11, 369, 480.
 to be admitted, 97, 109, 125, 143, 336, 366.
Award, 31, 128, 317, 416.

Bail, 13, 63, 64, 94, 113, 143, 144, 159, 225, 240, 242, 431, 514.
Bankruptcy, trover, 51, 115, 129.
 Court of Review, decisions in, *passim*.
Bankrupt Amendment Act, 151.
Bankrupt law, clause to defeat, 58.
 infant, 263.
 assignees of, 310.
 allowance, 95.
Bankrupts, 83, 178, 259, 338, 450, 523.
 superseded, 82, 178, 259, 338, 450, 523.
 Secretary, return of, 174.
Barristers called, 97, 335.
Barristers, Revising, under Reform Act, 9, 33, 50, 65, 95, 97, 381, 444.

Beaumont's Law of Insurance, 364.
Bentham on Plurality of Judges, 27.
Bills of Exchange Act, 66, 171.
Biography, legal, 204.
Bond, 223, 350.
Bray, William, Memoir of, 204.

Carriers' liability, 194, 210.
Cemetery act, 121.
Chancellor, Lord, a Barrister's letters to, 197, 267, 469.
Chancellor's, Lord, Court, decisions in, *passim*.
 political and judicial duties, 229.
Chancery Reform, 4, 6, 85, 92, 247, 311, 424.
 Regulation Bill, 501.
Changes in the Law, see *Table of Contents*.
Chapman's Practice, 296.
Chose in action, 322, 355.
Chronology, legal, for 1832.
Church reform, 53, 294.
Circuits of the Judges, see *Table of Contents*.
Clergyman's benefice, charging, 119.
Coining Act, 118.
Commissioners, the Law, 44.
 of stamps, 155.
Common Law Report, second, 389, 478.
Compensation, 113.
Composition articles, 40.
Contempt, 205, 238.
Contract, 513.
Certificated Conveyancers, 155.
Conveyancing, practical hints, 284, 441.
 dissertations on, see *Table of Contents*.
Cooke's Short Hand, 30.
Copyhold, 15, 141, 321.
Corporations' Act, 151.
Correspondence, selections from, see *Table of Contents*.
Corder's Local Courts of Westminster, 236.
Costs, 10, 11, 94, 108, 353, 383, 428, 514.
Coventry's Stamp Laws, 136.
Customs act, 183.
Criminal laws, debate on, 442, 519.
Criminals, returns of, 368.
Curtesy new Bill, 517.

Dax's Exchequer Practice, 378.
Declarations, 366.
Denman, Chief Justice, 27.
Demurrer, 513.
Descent, 36.

- Devise, 275, 290, 355, 434.
 freehold, 162, 194, 210, 306, 355.
 contingency, 51, 66, 99.
 entail, 162, 194.
 reversion, 52.
 purchaser, 52, 115.
 Discontinuance, 45.
 Disputed decisions, see *Table of Contents*.
 Dissertations on the law of Scotland, 89.
 miscellaneous, see *Table of Contents*.
 Distress, 16, 35, 50, 65, 99, 130, 131.
 Distringas, 63, 143, 144.
 Dividend, 272.
 Dowling's Collection of Statutes, 88.
 Dower, 15, 407.
 Dramatic literature report, 6.
- Editor's Box, *passim*.
 Ejectment, 13, 158, 240, 241, 271, 304, 430.
 Eldon, Lord, early days of, 82.
 Ellis's Life Insurance, review of, 55.
 Embezzlements Act, 101.
 Entries on the Roll, 283.
 Estoppel, 45, 139.
 Escape, 15, 35.
 Erskine, Lord, anecdotes of, 308, 334.
 Evidence, 301.
 Exchequer (Equity) Court decisions, *passim*.
 of pleas; decisions in, *passim*.
 Excise Permits Act, 57.
 Execution, 36, 190, 322, 514.
 Executors, 35, 51.
- Feme Covert, 16, 80, 307, 321, 355, 371, 434.
 Fines, history of, 419.
 Fixtures, 16, 66.
 Foreign Laws, 89, 281, 284.
 Forfeiture, suicide, 434.
 Formâ pauperis, 144.
 Forgery Act, 134, 135.
 Fraud, 156, 271.
 France, laws of, 284.
- Gambling, 414.
 Game, 509.
 Gavelkind, 450.
 General Registry, see *Table of Contents*.
 Godson's Supplement to Law of Patents, 119.
- Hale, Sir M. 341.
 Hayward's Common Law Statutes, 189.
 Heir, 387.
 Highways Bill, 405.
 Horse, 227.
 House of Lords, proceedings in, *passim*.
 Commons, proceedings in, *passim*.
 Hundred, remedies against the, 171.
 Husband and wife, 497, 210, 227, 354.
- India, laws of, 281.
 Insolvent, 285, 318.
- Insolvent debtors' act, 62, 151, 224.
 Insurance, 127.
 Interest, 147, 161, 288.
 Interpleader Act, 427, 428, 431.
 Inheritance Bill, 477.
 Injunction, 316, 495.
 Instructor clericals, 325, 441.
 Irish General Registry act, 278.
 Judgments, 333.
- Judges' Chambers, 186, 264, 300, 346.
 Judgment, 128, 270, 428.
 Judicial Characters, see *Table of Contents*.
 Judgments in Ireland, 333.
- Kenyon, Lord, Anecdotes of, 52, 67.
 King's Bench—reports of decisions in, *passim*.
- Lancaster Assizes Adjournment, 511.
 Law Clerks, society of, 44.
 lectures, 69, 437.
 reform; see *Table of Contents*.
 reformers, 261, 341.
 Society, Incorporated, 50, 265, 346, 365, 382.
 of Attorneys, 79, 246, 329.
 of foreign countries; see *Table of Contents*.
- Law Amendment Bill, 389, 422, 515.
 Law Class, King's College, 161.
 Laws, expired and expiring, 350.
 Lawyers in Parliament, 112, 117, 133, 155, 181.
 Lease, 16, 435.
 Lectures, Law, 69, 437.
 Legacy, 34, 127, 419, 435, 483, 499, 516.
 Legacy Duty, 409.
 Legal antiquities, anecdotes, &c. *passim*.
 Legal Reminiscent, 221, 268, 298.
 Liberum tenementum, plea of, 10.
 Lien, 319.
 Limitation, statute of, 15, 35, 51, 66, 130, 322, 349.
 Limitation and non-claim, 220.
 Local Courts, 80, 328, 360, 373, 433, 453, 469, 472.
 Lodging-house keepers, 135.
 Lost instrument, 85, 102.
 Lumley's Law of Annuities, 345.
 Lunatic's Act, 172, 293.
- Mandamus, 352, 353.
 Magistrates, double costs, 11.
 Manning's Courts of Revision, 217.
 Masters in Chancery, returns of, 172.
 , delays of offices, 62.
 Matthews's Digest of Offences, 509.
 Metropolitan Local Courts, 300.
 Miller's Reform Act, 29.

Mingay, Mr., anecdote of, 36.

Miscellaneous, *passim*.

Mortgage, 16, 36, 146, 418.

Nisi prius arrears, 215.

Nonsuit, 113.

Norfolk assizes bill, 315.

Northern Agents Society, 333.

Notes of the Week, *passim*.

Obituary, legal, 335.

Official Assignees, 225, 423.

Orders and rules; see *Table of Contents*.

Original, proceedings by, 146.

Parliamentary Returns, see *Table of Contents*.

Debates, 247, 442, 463, 519.

Proceedings, *passim*.

Parliament, new Bills, see *Table of Contents*.

Parliament, privileges and rules, 234, 282.

Partnership, 47.

Bills for Accounts, 494.

Patents for Inventions, 360, 377.

Petitions, public, 347.

Pleading, 10, 12.

Pleasantries of the law, 78, 142, 218, 253, 280, 411, 517.

Poor rates, 318, 368.

Practice, 7, 112, 142, 155, 305, 322, 414, 426, 481, 483.

Practical points of general interest, see *Table of Contents*.

Hints on Conveyancing, 284.

Prescription acts, 1.

Process, 31, 35, 65, 239, 384.

Property lawyer, see *Table of Contents*.

Promissory note, 99, 244, 516.

Priority, 415.

Prisoner, 158, 270, 430.

Privy Council Appeals Bill, 462.

Publications, list of new, 84, 180, 260, 340, 452, 524.

preparing, 180, 260.

Puis darrein continuance, 12.

Punishment of death, 100, 132.

Punishments, secondary, 89, 166.

Quakers' eligibility for parliament, 60, 227, 294, 331.

Quarter Sessions, 178.

Queries, *passim*.

Quit, notice to, 15, 116, 435, 484.

Ram's Assets, review of, 41.

Real Property Bills, 309, 407, 477, 463, 485.

Recovery, The last, 362.

Reformers of the law, 261, 341.

Reform, Law, see *Table of Contents*.

Registry, General, 294, 357, 379, 421, 423, 465.

Remanet fees, 193.

Remarkable Trials, see *Table of Contents*.

Rent, 418, 516.

Reports of decisions in the Superior Courts, *passim*.

Requests, Court of 318, 497.

Reviews, see *Table of Contents*.

Rolls Court, decisions in, *passim*.

Royal fish, 296.

Rules, new, of the Common Law Courts, 17, 23, 50, 58, 142, 155, 272.

Scotland, law of, 89.

Settlement, 16, 98.

Service of process, 241, 353.

Shares in canal, 343.

Shelford's Law of Lunatics, 106, 121.

Sheriffs' Court London, 449, 523.

Shrubs, 230.

Sittings in the Superior Courts, see *Table of Contents*.

Solicitor's costume, 154.

Somers, Lord, 261.

Stage coaches and hire of horses, 90, 362.

Stamp Acts, 510.

Strickland on Law Reform, 422.

Superior Courts, recent decisions in, *passim*.

Survivorship, presumption of, 38.

Taxation, 514.

Tenancy at will, 214.

Tenterden, Lord, judicial character of, 21, 92.

Term, first day of, 9.

Terms and returns, 177.

Theobald's Special Pleading, 165.

Theft, punishment for, 135.

Tithes Prescription Act, 1.

Title deeds, 87.

Torture, 17.

Trespass, 10, 15.

Trials, recent, 254.

, remarkable, see *Table of Contents*.

Trustees, 157, 307, 496.

Trust of personalty to pay debts, 102, 141, 222.

Variance, 369.

Vendor and purchaser, 16, 66.

Vice Chancellor's Court, decisions in, *passim*.

Vision in Lincoln's Inn Library, 182.

Voluntary conveyance, 243, 291.

Warrant of attorney, 318, 429.

Warranty, discontinuance, estoppel, 45.

Watkins's Conveyancing, 3.

West India Colonies Act, 184.

Will, 157, 224, 228, 270, 290, 321, 368, 496.

Witness, 144, 240, 384.

Woolrych on General Registry, 312.

Writs, service of, 413.

Wynford, Lord, his Bill, 360, 375.

